

MARCH 30, 2006

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March 30, 2006 LR 315, 316

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: Good morning. Welcome to the George W. Norris Legislative Chamber. Our acting chaplain this morning is Senator Fischer from the 43rd District. Senator Fischer, please.

SENATOR FISCHER: (Prayer offered.)

SENATOR CUDABACK: Thank you, Senator Fischer, for doing that for us. We appreciate it. I call the fifty-second day of the Ninety-Ninth Legislature, Second Session, to order. Senators, please record your presence.

SPEAKER BRASHEAR PRESIDING

SPEAKER BRASHEAR: Mr. Clerk, please record.

CLERK: I have a quorum present, Mr. President.

SPEAKER BRASHEAR: Are there any corrections for the Journal, please?

CLERK: I have no corrections, Mr. President.

SPEAKER BRASHEAR: Are there any messages, reports, or announcements, Mr. Clerk?

CLERK: Mr. President, the lobby report, as required by statute to be inserted in the Legislative Journal, and a series of reports received that will be on file in the Clerk's Office. That's all that I had, Mr. President. (Legislative Journal pages 1341-1342.)

SPEAKER BRASHEAR: Thank you, Mr. Clerk. Members, while the Legislature is in session and capable of transacting business, I propose to sign and do now sign the following legislative resolutions: LR 315 and LR 316. Thank you.

SENATOR CUDABACK PRESIDING

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SENATOR CUDABACK: The first agenda item, Final Reading, please read in the conditions of which they will be presented. Mr. Clerk, LB 57.

CLERK: Mr. President, a series of motions with respect to LB 57. Senator Thompson had the first amendment to be offered. I understand she wants to withdraw.

SENATOR CUDABACK: It is withdrawn.

CLERK: Mr. President, the next motion was Senator Beutler. And I've had a communication with Senator Beutler that he wishes to withdraw at this time.

SENATOR CUDABACK: It is withdrawn also.

CLERK: Senator Foley, your amendment, AM1893, Senator, should now be withdrawn and as much...is that right? Okay, thank you.

SENATOR CUDABACK: It is withdrawn also.

CLERK: Mr. President, Senator Chambers would move to return LB 57 to Select File for a specific amendment, FA197. (Legislative Journal, page 1312, First Session, 2005.)

SENATOR CUDABACK: Senator Chambers, you are recognized to open on your motion to return for a specific amendment.

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I believe it's clear to everybody that whatever debate occurs this morning is going to be a recapitulation or re-walking over the path that we have traversed prior to reaching this point. So in order that the record will know what this amendment does, on page 2, in line 9, the word "Homo" would be stricken and the word "Hetero" would be inserted. This amendment is one of those which is designed to call into sharp focus problems not only with this bill, but the attitudes that surround, undergird, and drive it. This whole issue of trying to protect zygotes, embryos, and fetuses create...it creates a preposterous set of circumstances for a Legislature. As with the major underlying issue, which is abortion, my view is that

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anybody, any church, any group or collection of individuals can preach and say all they want to that abortion is a sin. But they will never get me to vote as a member of the Legislature that it is a crime. That is really what we're talking about in all of these issues. When organizations call themselves antiabortion, antichoice, pro-life, or any other similar designation, their philosophical core is based on the idea that a woman should be compelled to carry a pregnancy to term. I don't subscribe to that notion. I do not believe, never have believed, never will believe that the state or society as a whole has a proprietary interest in the reproductive system of a woman. I do not believe that the state has the right to exercise ownership of a woman's body. And the tragedy in all of this is that while trying to exercise ownership of a woman's body, the only part they're interested is that between her legs. That's what it is we're talking about. Because of that, the people who hold those notions are in opposition to young women being taught about contraception and family planning. I read something that was very troubling to me. Because I do not watch these debates...and for the transcribers, there would be a period after that word "me"; I'm starting another sentence. Because I do not watch those so-called debates between Curly, Moe, and what's that other one's name?

SENATOR THOMPSON: Larry.

SENATOR CHAMBERS: Larry...people know who I'm talking about--Curly, Moe, and Larry, I don't...

SENATOR FRIEND: And Shemp.

SENATOR CHAMBERS: And Shemp. Thank you, Senator Friend. But the big three are the ones that we usually think about. And if the newspaper reported them correctly, I believe they said that, were they Governor, they would sign a bill of the kind that was passed by the South Dakota Legislature, which says that abortion is illegal unless the woman's life is at stake. If a woman is raped, she cannot legally obtain an abortion in South Dakota. But we know that a nutty law such as that will be struck down. If it's taken to the state Supreme Court of South Dakota, that court, knowing that it must comply with rulings by the U.S.

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Supreme Court which proclaim the law of the land, cannot find that law to be consistent with the U.S. Supreme Court's determination. If it is taken to the federal courts, the same result will obtain. The U.S. Supreme Court is not of a mind to uphold something as nutty as that. I'm going to read an article which angers, infuriates, disgusts me because I'm a black man and the victim was a black woman. But as will be pointed out in this article, rape is a heinous and vicious crime, no matter against whom it is perpetrated. But the fact that the female was black led the university where it occurred to drag their feet, try to look the other way until a group of students and others came to this house where the perpetrators are located and began literally beating on pots and pans. There was outrage expressed throughout the country, throughout the town of Durham. And I'm going to read the article. However, my time may run out before I can complete it, so I'll ask the Chair, how much time do I have left?

SENATOR CUDABACK: You have 4 minutes.

SENATOR CHAMBERS: I perhaps can get it finished. This appears in today's newspaper, the Lincoln Journal Star, on page 5C; headline: Duke needs to do more in scandal. The byline is that of Tim Dahlberg, D-a-h-l-b-e-r-g, of the Associated Press. Reading: The usual inclination when college athletes are involved in scandals is to rally around the school, promise an investigation and go on with business as usual. So give Duke officials some credit for finally taking action while police investigate allegations that an escort service worker, hired for what she thought was a small bachelor party, was raped by members of the school's nationally ranked lacrosse team at an off-campus house. Okay, so they waited until protests erupted both in town and on campus before suspending the team's season indefinitely. And maybe it took some banging on pots and pans outside the house of the university provost to help it all sink in. In the end, though, they did the right thing. They barred the team from playing again until the whole mess is cleaned up. The problem is, they did not do enough. Not for the alleged victim, not for the town of Durham, not even for team members who had nothing to do with the whole thing and are paying penalties for it. The local folks have good reason to be upset,

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and not only because what allegedly happened at the March 13 party was so ugly that we won't even bother to discuss the details here--the fact it may have also been a hate crime involving a black victim who said her attackers were all white. Witnesses quoted by The News & Observer of Raleigh said they heard racial comments directed toward the woman before she was allegedly raped, including one neighbor who said he heard someone at the party say, "Thank your grandpa for my cotton shirt." See, let me continue reading. Not the kind of thing you want to yell out in a town that is half black if you're a white student at a school where tuition is \$43,000, more than most families earn in a year. "The circumstances of the rape indicated a deep racial motivation for some of the things that were done." That's what the Durham district attorney, Mike Nifong, N-i-f-o-n-g, said. "It makes a crime that is by its nature one of the most offensive and invasive even more so." It's hard to make this any more offensive. The alleged victim was not drunk and partying with the team. She identified herself to The News & Observer as a mother of two and a student at a nearby college who was trying to support herself by going on dates with men. It does not matter what you do for a living, no one should be violated by three men in a bathroom. Police should not have much trouble solving this case. They have video tapes and pictures taken during the party...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...and four red...excuse me? Excuse me, Mr. President...

SENATOR CUDABACK: I said 1 minute, Senator.

SENATOR CHAMBERS: Oh, thank you. Four red fingernails from the bathroom where the alleged attack occurred. They even have DNA swabs from 46 players. What they don't have is any real cooperation from the players themselves. They've banded together and refused to talk, other than issuing a statement from two captains calling the allegations "totally and transparently false." Nifong has warned that players who do not cooperate may be charged with aiding and abetting. But maybe it's time for the university to turn the heat up itself. Duke

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president Richard Brodhead, B-r-o-d-h-e-a-d, suspended the season only after protests were held on and off campus. University officials say there's little more they can do, but there is. A good start might be to suspend the entire from team from school if players don't start talking to police...

SENATOR CUDABACK: Time, Senator Chambers.

SENATOR CHAMBERS: Thank you, Mr. President.

SENATOR CUDABACK: You may continue; your light is next.

SENATOR CHAMBERS: Thank you. That should get some tongues wagging. If it does not, start revoking scholarships and kicking players out of school. If nothing else, their parents will be so angry that they'll make them talk. What the three stooges in Nebraska are saying is that if that young woman winds up being pregnant, she should not be able to get an abortion. The victim of a vicious rape such as that should not be able to legally get an abortion. And that's what these three men, one of whom professes to be the moral prince of this state, Tom Osborne, has said, too. The pandering, the grovelling, the total abdication of moral decency and respect is what I witness on the part of these three men running for Governor. There is not one of them for whom I can or will vote. Do I believe that Tom Osborne or David Heineman or "nibity-Nabity-noo" genuinely believes that a woman viciously raped should not be able to obtain an abortion? Do I think any one of the three genuinely believes that if a woman is impregnated by a family member should not be able to obtain an abortion? No, I don't believe that. So if they have said that is their belief, and I say I disbelieve what they say, what I am I calling each of them? A barefaced liar, a pandering politician who will say anything to obtain votes, will say anything, even if it means demeaning, degrading, and abasing a part of the population which comprises more than 50 percent of the population. It should not be comforting to women to know that men seeking the highest position in this state and men holding positions in government in other states and the federal government would take such terrible positions. The problem part of it is that women have been conditioned from the time they were little girls to accept

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anything said against them which is degrading as being no more than they expect; humiliating, no more than they should expect. They have been taught to accept physical abuse, verbal abuse, sexual abuse as their lot in life. When you make a person feel that there are no alternatives to what that person faces, no options available, that person, rather than looking for a way out of that situation, will adopt an attitude of resignation and fatalism, being told that there is no escape. All she can try to do is steel her mind, her nerves, her emotions to somehow survive each one of these horrific episodes and hope that when it's over there is a shred of rationality left so she can begin to try to heal herself until the next episode.

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: When we talk about the kinds of issues that are before us today and related issues, what I'm talking about does not come up unless I bring it up. When I'm out of here two years from now, this state does not have to worry about listening to the kind of things that I'm talking about. The men on the floor of this Legislature and the women who may be among that conditioned group of victims that I'm talking about, who may not even realize that they've been victimized, will not have to sit in discomfort and maybe even embarrassment while words such as I speak now and will continue to speak are uttered. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. (Visitors introduced.) On with discussion on the motion to return. Senator Chambers.

SENATOR CHAMBERS: Mr. President, I have received much scurrilous mail on this issue. But that's power for the course for me because I receive scurrilous mail from white people in this state when there is no particular issue before the Legislature upsetting to them. They may have read something that reminded them that a black man such as myself is in the Legislature so they write or call on the phone to vent their spleen. And let me tell you one thing which I did not contemplate when I got rid of an e-mail address but which makes me very amused and contented that I do not have an e-mail

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address. I have colleagues who are receiving e-mails filled with racial slurs and obscenities directed at me that they want that colleague to be sure that I get because I don't have an e-mail address. So what they do is confirm what I've said on this floor about the vicious types of correspondence that these cowardly white racists will send. So if my merely existing can make them so angry, I'm merely fulfilling a scripture. There is a verse in the "Holly Bible" which says anger rests in the bosom of a fool. Now why is a person a fool to have anger resting in his or her bosom? Because anger saps a person's vitality. Anger paralyzes a person's intellect. Anger puts an individual in a position where the basest emotions take control and will stampede that person into saying and doing things which, immediately upon having done or spoken, the person regrets it and says, oops, I ought not to have said that, I ought not to have done it. But the fact is that it was done. I sometimes will give analogies to draw a picture in the mind of those who may be listening of what I'm trying to say. We have people on this floor who own cattle. There are people in this state who herd cattle. If you can keep the cattle under control, then you can guide them and maneuver them and drive them where you would like them to go. But if something happens...in the movies, they called it being spooked. If something spooks the cattle, these few two-legged individuals sitting atop, at least cousins of the cattle, are unable to control those cattle because you have what is known as a stampede--every cow, bull, calf for itself and the Devil take the hindmost. And if one of these persons, who up to that time had been in control, gets in the way and says, cattle, stop, I am a rational animal, I'm smarter than you and you must listen to me and I say stop, and the person is trampled right into the ground. That's the way these emotions are. If you keep your emotions in check, they are of great value. They add a component to your overall makeup which will make it possible for you to feel, to be sensitive, and identify with people who are suffering what you are not. Your mind explains to you what that person is going through; your emotions react as though it were happening to you or to somebody who means something to you. So emotions have a very important role to play in the overall makeup of a person.

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SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: Now if you keep the emotions in check, that's fine. If they once get loose, the same thing that happens in a cattle stampede happens here. Your intellect is out the window. And if you want to make rationality something distinct from the intellect because it is that which is produced by a properly functioning intellect, your rationality is gone, too. And you do and say things which you come to regret. When we look at these kinds of issues that are involved in the bill that Senator Foley has brought to us, intellect is on vacation. No intelligent person could say for a moment that there can be serious bodily injury to an item which is not even visible to the naked eye.

SENATOR CUDABACK: Time, Senator Chambers.

SENATOR CHAMBERS: But this bill would make it a crime. Thank you, Mr. President.

SENATOR CUDABACK: Further discussion? There are no further discussions. Motion before the body is...Senator Chambers, you're recognized to close if you wish to.

SENATOR CHAMBERS: Thank you, Mr. President. See, I was not going to let my emotions take over and make me cry out. I was just going to wait because I have an intelligent man in the chair and I knew we would get to where we should be. I have enough motions or offered amendments on this bill to carry us to the point where cloture may be attempted. And that's what I intend to do, put some things into the record. And since we all have to be here today, there cannot be the empty seats and people cannot hightail it to the Senators' Lounge. Although being grown and free agents, you're free to do anything you want to. You can still all leave. I got a call yesterday from a gentleman in California. He had been a student at one of the medical schools and now he is studying law. And he told me that every day he watches on the Net the debates that occur in this Legislature. So what we say and what we do is available to anybody who has one of these gadgets or some version of it. And if these gadgets are found in Iraq, the Iraqis can listen. They

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may not understand the words that I utter if they don't speak English. But I'm sure they will say, as I look at that man whose complexion is closer to mine than that of these invaders and occupiers and I listen to the tone of that voice, I look at his expressions, and when the camera happens to show the other pale people of the kind who are in my country, I just have to assume that he's facing similar things to what we're facing here; that while democracy is discussed, everything done by those who preach democracy go contrary to it. So I would suspect that people of his complexion have to listen to all the talk about democracy and wonder why, at the point of a gun, democracy is to be enforced in this country and forced upon people who don't want it. And the other day, the President said the highest ranking people in his cabinet are going to do all they can to bring about a democratic government in Iraq. But in America, in Nebraska, hostile white people said that they don't want that black man in office. And they will change their constitution to get him out of office. And they say it's democratic because, in a democracy, the majority rules. It just happens that the majority is white. So they have the right, under democratic principles, to deprive black people of the right to elect representation of their choice and that's how a democracy works. White people can determine that it is not going to be effective when it comes time for black people, who need strong representation, to select that representation so they change their constitution. Yet over here, they're trying to get us to put in place a government that says the Sunni minority must be given a role in the government. Because under democracy, all elements of the populace must be a part of the government. Otherwise, you don't have democracy. And the individuals that make up that minority must have the right to send people of their own choice to represent them in this multifaceted government, except in America. America, which is the paradigm of a democracy, America, which is the template of democracy, while telling everybody else how to function,...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...America does not see the need to function that way itself. And that's why we tell them, take your democracy and do with it what you're trying to do to us. And to

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my brothers and sisters in Iraq who may be watching, and Afghanistan, if they are watching, and as they say in "Soul Train": Africa, Asia, Israel, Palestine, Russia, too, Godspeed, because you ain't going to get nothing from America. Mr. President, I'm going to withdraw this pending amendment.

SENATOR CUDABACK: It is withdrawn. (Doctor of the day introduced.) Mr. Clerk, please?

CLERK: Mr. President, the next motion I have, Senator Chambers would move to return LB 57 to Select File for specific amendment, FA198. (Legislative Journal page 1312, First Session, 2005.)

SENATOR CUDABACK: Senator Chambers.

SENATOR CHAMBERS: Thank you. And, Mr. President, again, so that the record is clear, what this amendment says is that a new section would be added. And for people who may not know what this bill is about, it is a fetal assault bill. It makes it a crime to assault a fetus. The bill refers to it as an unborn child. But they give a definition which says, in effect, from the point of conception, you have an unborn child, a full-fledged human being. And at conception, an egg is fertilized. When that occurs, you have what's called a zygote which is not visible to the naked eye. So how are you going to assault and cause bodily harm to that which has no body? That is the foolishness of this legislation. And when people get sound bites on the radio or television, or read a word or two that might be provocative which appears in the paper but no explanation is given of what this bill does, it's easy to portray me and others who support this bill as those who have no feeling for a developing fetus. What I am saying, speaking only for myself, is that it is preposterous to say, if you pick up this piece of paper and it was typed, at the end of the sentence is a period. And that which is going to be the victim of an assault is smaller than that period. How in the world can that which has no body be subject to great bodily injury? That's what happens when these "one-ideaed" people, who are so caught up in the notion of preventing abortion under any and all circumstances, will push a Legislature, because the legislators

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fear political repercussions, into putting into law something that I'm talking about here--serious bodily injury to that which has no body. When I get some of the scurrilous mail, I will be sent pictures of a fetus. I don't know whether it's computer generated. I don't know whether it's a picture of an aborted fetus, whether by way of miscarriage or an abortion, legal or otherwise. But when the person sends it, they will ask questions. How can you say this is not a baby? What I would ask them, how can you say that we ought to pass a law which is not talking about what you're sending me a picture of, but something smaller than the period at the end of the sentence that you wrote? They don't believe that. They think that I'm lying. They say that I am so pro-abortion that I will say anything to misrepresent anything Senator Foley brings. I am not misrepresenting it and I have tried to bring amendments such as this one, which Senator Foley objected to. This amendment would say, "The provisions of this act shall not apply until the individual member of Homo sapiens in utero has reached a stage of development where arms, legs, hands, feet, and a head are present," which means you have a body. And although I disagree with this approach of giving a fetus independent existence from that of the pregnant woman, if you're going to have a law like this, let it apply at least where there is a body. Senator Foley said, and at the time he said it there was no opportunity for me to speak because we moved on, that since this amendment contains plural words such as arms, legs, hands, feet, that somebody could challenge the application of the law if a fetus happened to have one hand, being born deformed. What Senator Foley and others may be unaware of when it comes to the interpreting of laws is that courts are operated by judges who have intelligence. They are not driven by the narrow-minded zealotry of zealots and religious extremists. And where there is a plural word, it also includes the singular. Where there is a singular word, it also includes the plural. When we talk about a person, we don't say a person or persons, making it plural. The singular, when it comes to construing statutory language or constitutional language, includes the plural. So Senator Foley's reason, among others, for objecting to this amendment is because the plural is there and a fetus may only have one arm, one leg, one foot, is as preposterous as the bill itself. But this amendment is not irrational. If a prosecutor

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were to bring a charge, how is the charge to be filed? Let's say he is as rabidly antichoice as Senator Foley and his ilk and an assault occurs against a woman the night that she conceives. You know that no charge of assault on a fetus can be brought at that point. And if the pregnancy goes to term and a child is born into the world and there is some problem with the child, how are you going to trace it back to the assault that occurred the night of the conception? Well, these religious fanatics who are politically motivated would bring the charge anyway, not expecting to obtain a conviction, but to make a statement of his or her particular religious persuasion, that, by God, we think from the time of conception there is a full-fledged human being and every opportunity I get, by using my office, I'm going to make that clear, so I'm going to file the charges against somebody. So let's say that the woman identifies somebody who had assaulted her. Notice the prosecutor is not concerned about the woman having been assaulted; he's concerned about a zygote. What I have argued over and over and over is that my point of reference is the woman. There is one person in existence and that is the woman. If a pregnant woman is attacked, the attack against the woman should be charged, as in the case when any person is attacked. But the nature of the offense should be enhanced if she is pregnant. And that's how you protect the woman, by making anybody know that if you attack this pregnant woman, there's going to be a price to pay. But under Senator Foley's approach, you can beat the stew out of this woman, but you know where the focus is? On the embryo or the fetus, because they want that embryo or that fetus to be considered a separate person. And I think that is cynical and that kind of attitude can be preached in churches throughout the land and I would have nothing to say other than how simpleminded it is. But I wouldn't try to stop them through the coercive power of the state. But when they want to bring that mess into the law and use the coercive power of the state to enforce, by criminal sanction, their particular religious view, then I'm going to fight it, if I'm the only one. And that is one of the reasons these white people...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...are going to be so happy when I'm no

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longer here. Did you say time, Mr. President? Did you say time?

SENATOR CUDABACK: I said 1 minute, Senator.

SENATOR CHAMBERS: Oh, thank you. I will continue to talk about this and talk about it. And I'm going to take, as my example, a man that--I guess he's a man--that you all pray to every morning in this Legislature. He said what he had to say. People mocked him, they scoffed at him, as you all would do if he came walking around here now. You all would tell him, man, get out of here. And he'd say, have you checked the scriptures? And they'd laugh. That's for bedtime stories and prayers by chaplains when the Legislature is open. We don't believe that crap. And that's exactly the way they would express it. But their life demeans it even worse than that because they profess to believe it. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. (Visitors introduced.) On with discussion. Senator Schimek, on the motion to return.

SENATOR SCHIMEK: Thank you, Mr. President and members. I've really struggled with this bill because I believe, like Senator Chambers, thinks it would be a very bad thing if someone is pregnant and they are assaulted, and as a result of assault they lose that child or that child is severely injured. But I think, you know, Senator Chambers has a very colorful way of speaking, sometimes even an inflammatory way of speaking, but he's so right about this issue. He is right on target. I could so easily support a bill that said if a pregnant woman is assaulted, you know, it's an automatic extra ten years for that person who is convicted of that assault. I would have no problem with that. I could justify that, even if that woman is not very pregnant. You shouldn't assault a pregnant woman. And the pregnant woman is the one being assaulted and she's the target of that hostility and she's a target of that violence. And in this bill, we forget that. The injury is to the woman, not only physically but emotionally and mentally. If she loses that baby, that's a further violation of that woman. I don't think it's going to be very easy to prosecute under this bill.

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It would be so much easier to prosecute if you just said, okay, if you assault a pregnant woman, you get an automatic extra ten years if convicted. I don't care what that additional sentence would be. You should not assault a pregnant woman. But this one, how are you even going to know if there's injury to that fetus? How are you going to know until maybe five years down the road or six months down the road after that baby is born? Maybe there's some kind of developmental problem. And if there is, how are you going to know it's a result of that assault? How are you going to prosecute that? It doesn't make good sense to me. And yet, I know that I've got constituents out there who are writing me and asking me and fervently hope that I will vote for this bill. And I understand where they're coming from. But I also understand that this is not a very good bill, and I don't think I'm ultimately going to be able to vote for it. I think what's prompting me to get up and say this today perhaps is what's happening in South Dakota and that attitude that you ought to suffer the consequences of what you've done. And that's not a two-way street. That is a one-way street. It takes two people to make a baby...

SENATOR CUDABACK: One minute.

SENATOR SCHIMEK: ...and yet it takes one woman ultimately to be responsible for that child. What if that woman is 13 years old and she is raped by her father or her brother? That South Dakota law says no exceptions. That is wrong. I think it's against what the court has declared constitutional, and I think we'll...I mean, I don't know if we'll see any more states do this or not, but I hope not. The woman...the focus the woman should not be on lost in the debate. She is an essential core part of the situation. And, Senator Chambers, you're right on, and a lot of people believe you're right on, on a lot of issues.

SENATOR CUDABACK: Time, Senator Schimek. Thank you, Senator Schimek. Senator Chambers, followed by Senator Brown.

SENATOR CHAMBERS: I will waive, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Senator Brown.

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SENATOR BROWN: Thank you, Mr. President, members. Somewhat in response to some of the things that Senator Schimek has said, I want to talk a little bit about some of my conversations with Senator Foley about this bill. When Senator Foley approached me about this bill, he reminded me that I had voted on his previous bill about the murder of an unborn child or the death of an unborn child. And I did that because I...actually, I had been approached several years ago to carry some legislation by a family whose daughter had been killed by a drunk driver and their grandson, Zachary, had died as a result of the accident, too. And they really wanted some legal recourse on behalf of the child that was within weeks of being born, if not days of being born, had the accident not occurred. And so I fully understood what Senator Foley was trying to do and understood that there would be a clear outcome that you could look to and a clear way to hold somebody accountable for that clear outcome. With this bill, I'm not nearly so sure of that. And what Senator Foley had suggested to me that might change my mind was the case of Rae Carruth, who is a football player who was involved in the murder of his girlfriend who was pregnant. And the child was born, and was born with problems that are most probably associated with the circumstances of his mother's death and his birth and the assault on his mother. And so I, in researching that, in researching the whole idea of whether we can pursue the assault aspect of it, I went back and read a lot about the Rae Carruth trial and tried to find some other instances where there has been a charge in the states that have a law similar to what is being proposed here, whether there has been a sentencing based...or a conviction based on the assault piece of it and a sentencing based on that piece of it. Now, in the Rae Carruth situation...and the other part that I think that probably makes Senator Foley most interested in the Rae Carruth piece is that one of the reasons that Rae Carruth was alleged to have been involved in the murder of his pregnant girlfriend was because she would not have an abortion. He had a problem of a number of children that he had fathered and...

SENATOR CUDABACK: One minute.

SENATOR BROWN: ...being able to, even though he made a great deal of money, being able to take care of those children. And

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so what he was eventually convicted of was conspiracy in the murder of his girlfriend, use of an instrument...let me get the exact term, using an instrument to destroy an unborn child, and discharging a firearm into an occupied property. He was involved in penning her car in so that his co-conspirator could shoot her while she was trapped in her car. Had he been found guilty of first-degree murder, he could have received the death penalty...

SENATOR CUDABACK: Time, Senator Brown.

SENATOR BROWN: Thank you.

SENATOR CUDABACK: Thank you, Senator Brown. Further discussion? Senator Landis, followed by Senator Chambers and Senator Brown. Senator Landis, motion to return.

SENATOR LANDIS: Thank you, Senator Cudaback, members of the Legislature. I have an amendment which I think actually needs to be drafted a little better to this bill, but you'll find it on the gadget and it establishes the linkage that Senator Schimek and Senator Chambers have talked about, because it says, essentially, that this offense occurs in the context in which a woman is assaulted. Now perhaps it needs to be drafted so that it's assault or the victim of a recklessly careless act, but that the gateway to the offense is this, the fact that you are assaulting a woman or, in fact, there is a reckless, careless act with respect to a woman which, in turn, produces this effect on the fetus, unborn child, whatever language you're going to use here. I, too, think that these need to be linked together. I, too, think that the bill is...and if you wanted to get at legal offenses, you'd draft the bill, I think, easier for a prosecutor. But if you wanted to get at the idea of separating a woman's interests from the fetus' interests, you'd draft it exactly this way, which is why I think it's drafted this way. I think the purpose is to make a philosophical point, and here's an example of it. If you take a look at what constitutes a third-degree offense under this, it includes a reckless, careless act that creates serious injury for the unborn child. It's, I think, assault in the second degree. A person commits the offense of assault on an unborn child in the third degree if

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he or she recklessly causes serious bodily injury. If you take a look at the defense portions of the bill, it says, an act or conduct that is committed or engaged in by the mother of the unborn child is, in fact, a defense. Let me give you a hypothetical that I think is criminalized by this statute. Husband and wife in marriage get a warning from a doctor that says sexual contact should come to an end or intercourse should come to an end at X period in the pregnancy, after seven months, eight months, whatever. Conceptually, consensually and carelessly, they engage in intercourse after that period of time. There winds up being injury to the child and if you read the defense section, an act or conduct that is committed or engaged in by the mother, it's a defense for the mother but not the husband. In other words, if you link third-degree assault to the defense section, the husband in that action would have no defense for the consensual sexual, reckless, careless, negligent, stupid, but not criminal now and would be criminalized by this statute, it seems to me. The defense doesn't go to...the defense goes only to the wife, but not the husband. That's what I think the language, conduct that is committed, that would be the wife, or engaged in by the mother of the unborn child, and to me, what that says is the woman gets off the hook but nobody else does. And who is nobody else? If the husband certainly is criminalized by that behavior, so too, very simply, would a doctor, so too would somebody committing an abortion, because that's the point of the statute. The point of the statute is, the mother can't consent to anybody else's actions, she can only consent to her own. And that's a gateway to the point that a mother cannot consent to a doctor committing an abortion.

SENATOR CUDABACK: One minute.

SENATOR LANDIS: That's the philosophical point here. If you wanted to get to this as a social evil, you'd draft the bill along the lines that Senator Schimek indicated and you'd get to it. You'd have a usable, definable, prosecutable statute pretty easily. This is, from my perspective, a philosophical statement that is a precursor to this line of argument. Women cannot consent to actions that impact the well-being of an unborn child that they are carrying. The only person, the last person in the

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world that they can consent to is the doctor. They can't even consent to a husband in this case, negligently, stupidly, recklessly, but creating that injury, but through consensual acts. And it's not a far cry to see where this is going because it's essentially to say...

SENATOR CUDABACK: Time, Senator Landis.

SENATOR LANDIS: ...women cannot consent. Thank you, Jim.

SENATOR CUDABACK: Thank you, Senator Landis. Further discussion, the motion to return? Senator Chambers.

SENATOR CHAMBERS: Thank you. Mr. President, before I proceed, I'd like to ask Senator Foley one question.

SENATOR CUDABACK: Senator Foley, would you yield?

SENATOR FOLEY: Yes.

SENATOR CHAMBERS: Senator Foley, I'm making presumptions which I probably shouldn't. Is there any amendment currently pending with which you would agree that is on the gadget right now?

SENATOR FOLEY: Senator Landis' amendment is interesting to me. I saw that it was so far down the list that I didn't really take it that seriously. I don't want to say that I would never accept an amendment. But obviously on the, what, the fifty-second day, whatever it is, to pull the bill back now would be problematic from a number of perspectives. So...

SENATOR CHAMBERS: Well, I'm not asking you to necessarily debate one way or the other the amendment. Is there any amendment here that you would accept?

SENATOR FOLEY: I'm hesitant...Senator, I'm not trying to be evasive. I'm really not. Senator Landis' amendment is interesting and I don't want to dismiss it without thinking about it more deeply. And the other amendments, quite frankly, I haven't looked at them that carefully because I didn't think of them as serious amendments that I could work with.

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SENATOR CHAMBERS: The reason I'm asking you, I'm focusing, and I should have said so, on what Senator Landis talked about. But the only way we can get to his is if mine go away. But mine are not going to go away if it's a part of a stratagem just to get me to pull mine and then Senator Landis' would be rejected.

SENATOR FOLEY: I guess, then, Senator, the best answer I can give you is that it's highly unlikely that I would accept any amendments at this point.

SENATOR CHAMBERS: Okay.

SENATOR FOLEY: But...well, maybe I'll just leave it at that.

SENATOR CHAMBERS: That's fair, thank you. Mr. President, nevertheless, I will withdraw this pending amendment.

SENATOR CUDABACK: It is withdrawn. Mr. Clerk.

CLERK: Mr. President, the next motion I have, Senator Chambers, FA199, Senator.

SENATOR CHAMBERS: I will withdraw that amendment.

SENATOR CUDABACK: It, too, is withdrawn.

CLERK: Senator Chambers, FA200.

SENATOR CHAMBERS: I will withdraw that amendment.

SENATOR CUDABACK: It also is withdrawn.

CLERK: Senator Chambers, FA202. (Legislative Journal page 1315, First Session, 2005.)

SENATOR CHAMBERS: This one I will discuss briefly, Mr. President.

SENATOR CUDABACK: You're recognized to open on motion to return.

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SENATOR CHAMBERS: Mr. President, members of the Legislature, I want this in the record so it will show the kinds of things which are rejected which would bring a bit of rationality into this bill regardless of whether or not a person is...the words, pro-choice or pro-life, whichever. This amendment would say add a new section which would say the following: the provisions of this act shall not apply until after an individual member of the species *Homo sapiens* in utero is of sufficient size to be visible without the aid of a microscope. This is to show graphically what this bill deals with. How can there be serious bodily injury to an object, to an organism, to a developing member of *Homo sapiens* which is not visible other than with a microscope? You cannot see it other than with a microscope. Can you all understand what you're being asked to do? Yes, you can. Do you know what you're being asked to do? Yes, you do. But you will nevertheless feel compelled to do so. Having said that, Mr. President, I will withdraw this pending amendment.

SENATOR CUDABACK: It is withdrawn. Mr. Clerk.

CLERK: Mr. President, the next amendment, Senator Chambers, FA203. (Legislative Journal page 1315, First Session, 2005.)

SENATOR CUDABACK: Senator Chambers.

SENATOR CHAMBERS: Oh, this is the one with the microscope. So having discussed it already, I will use it to make a point or two.

SENATOR CUDABACK: You're recognized to open, motion to return.

SENATOR CHAMBERS: Thank you. I'm going to go back and just touch on what that previous one had been. It would have said this, but it would have been rejected by Senator Foley also, but I didn't want to take much time. For purposes of this act, body means the stage of development where an individual member of the species *Homo sapiens* in utero possesses arms, legs, hands, feet, a head, and organs including heart, lungs, kidneys, liver, spleen, and stomach, to give an indication of what the stage of development is where it might be possible to determine that an

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assault against a woman did serious bodily injury to a fetus because the body which is injured would indeed have those components which constitute a body, whether inside the body of the pregnant woman or outside walking around in the way that we are. I'd like to ask Senator Landis a question.

SENATOR CUDABACK: Senator Landis, would you yield to a question of Senator Chambers?

SENATOR LANDIS: Senator Chambers.

SENATOR CHAMBERS: Senator Landis, you did make it clear that you're serious about your amendment, correct?

SENATOR LANDIS: I am. I think it's a conceptual framework that, by the way, would allow me not to oppose the bill.

SENATOR CHAMBERS: And in order for us to get to something that does have an air of rationality, I'm withdrawing this amendment that is pending also. Thank you, Mr. President.

SENATOR CUDABACK: It is withdrawn. Mr. Clerk.

CLERK: Mr. President, the next motion I have, Senator Landis, you had filed AM2635. I have just been apprised that you would like to substitute AM2989 for that?

SENATOR LANDIS: Correct. The latter one is written to the Final Reading amendment...version.

CLERK: I see, very good, Mr. President. Mr. President, Senator Landis would move to return LB 57 for specific amendment, AM2989. (Legislative Journal page 1343.)

SENATOR CUDABACK: No objection, so ordered. Senator Landis, to open.

SENATOR LANDIS: Thank you, Mr. Speaker. Members of the Legislature, if you want to take a look on your gadget under proposed amendments, you'll see that mine is AM2635. If you open it up, it says, it inserts in three places, lines 12, 17,

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and 23, "during the commission of an assault on a pregnant woman." By the way, that's criminal or civil, from my perspective. So it, in other words, in the event you are assaulting, civilly or criminally, a woman and these injuries take place to the unborn child, the crime is committed or the careless act has been committed. I'll tell you what I think that means. I think it means that if the husband, who stupidly...and the wife, the husband and wife who stupidly engage in, let's say, inappropriate sex past a point of some safety, while they've done something for which they will suffer personal consequences, have not committed a crime. And neither one of them have committed a crime; neither the husband or the wife. Why? Well, because the wife was not assaulted. It was a voluntary, consensual act. And I don't think we want to criminalize marital relations even when they're ill-advised, stupid, and negligent. I think that's someplace else in the code rather than the criminal statutes in that case. In other words, consensual acts between married partners. I will be happy to say that this language applies to both. For example, when a drunk driver hits a woman, that also works, from my purposes, for hitting the unborn child to get to the careless act. That means the same to me. Using the fact that this is both criminal and civil, from my perspective, I think we cover the entire act, although I confess it probably could be drafted better. In the end, my goal is to tie these two interests together sufficiently to say that it must be a nonconsensual act that produces this injury, nonconsensual to the mother that produces this injury to the unborn child. So that you understand this is not an amendment that is designed to simply flummox us structurally or time wise, adopt the amendment, and I'll vote for the bill. That means that it's not done simply for the purpose of spending time and being a hurdle to the bill. I'm saying, acknowledge that the woman's interest is a legitimate part of this, that there needs to be an assault on the woman as we get to the problem of the injury to the unborn child using the language of the proponents, and I could vote for the bill and wouldn't oppose cloture if we got there. I want the woman's role and interest to be acknowledged. This amendment does that. Thank you.

SENATOR CUDABACK: Thank you, Senator. You've heard the opening

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on the motion to return. Discussion? Senator Brown.

SENATOR BROWN: Mr. President and members, what Senator Landis said at the end of his remarks, that he wanted the woman's role to be acknowledged in this, is the point that I was trying to get to with what I was telling you about the Rae Carruth trial. Because he was convicted on three...of three things: conspiracy to commit murder, discharging a firearm into an occupied property, and using an instrument to destroy an unborn child. But in the sentencing...well, even in the conviction, the jury had two ways that they could find him...assess the death penalty. One was the commission of first-degree murder, which they did not convict him of. The other was to convict him of a felony count of assault on an unborn child and then find the murder in the felony, would be felony murder and then they could have assessed the death penalty. They did not find in either of those cases. And when the judge did the sentencing, he used aggravating factors only on the first two elements of the conviction, the conspiracy to commit murder and discharging a firearm into an occupied property. The judge's comments all went to, even though the family testified about the boy, the child that was born, Chancellor, who, at that time was 14 months old, has cerebral palsy, had not been able to sit up or hold a rattle, the judge only sentenced and used as aggravating factors the things that happened to the mother, the things that had to do with what Rae Carruth had done to the mother. And so his sentence, his ultimate sentence, was 18 years 11 months to 24 years 4 months which was, for the items, first two items that he was convicted for, pretty much the maximum penalty that he could receive. But it is entirely unclear whether he received any time for the third element of the conviction, using an instrument to destroy an unborn child. And so I think that the point is that both the jury and the judge acknowledged that the woman and the life of the woman and the taking of the life of the woman was the principal piece of this assault. And that's why I would agree with Senator Landis' amendment. If we are saying that the woman, and particularly, as Senator Schimek so...put it so well, a pregnant woman, is the preeminent issue here, then I could feel comfortable. I still have issues about some of the things that Senator Chambers has raised...

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SENATOR CUDABACK: One minute.

SENATOR BROWN: ...because I think that in the...in assault, I mean, the murder of an unborn child, the death of an unborn child, that you have a very clear outcome that you can look to. Certainly in the circumstance of Chancellor who has cerebral palsy, it's very...it's pretty much been confirmed by a number of doctors that that cerebral palsy is related to the lack of oxygen from the time that his...his mother did not die immediately and there was a great loss of blood and that that is related to his cerebral palsy. I think that there are some instances where we can see a clear connection. But in those instances that Senator Chambers has talked about when it's not a fetus and we would not be able to see a clear connection between the assault on the pregnant woman and any particular outcome for the child, then I'm a little bit less comfortable. But I certainly am more comfortable if we are acknowledging that the assault on the woman is the primary action. Thank you.

SENATOR CUDABACK: Thank you, Senator Brown. Senator Chambers.

SENATOR CHAMBERS: Mr. President, members of the Legislature, I have often said, in one way or another, that while we're in this Legislature, we in a sense live, work, have our being around and with each other. We have to learn how to facilitate actions that will make it possible for us to reach a desired result. So this morning, I shall be like a bridge over troubled waters and yield the time that I have remaining to Senator Foley. So if the Chair will make this known, I think Senator Foley will return to his mike and address the body. Thank you.

SENATOR CUDABACK: Thank you, Senator Chambers. Senator Foley, Senator Chamber gave you the remainder of his 4 minutes.

SENATOR FOLEY: Oh, my God. (Laugh) Thank you for the time, Senator Chambers. Senator Landis and I have had some very constructive conversations and I think what I'll ask the Speaker to do is pass over the bill, which will give Senator Landis and I some time to talk through this a little bit further, in the hope that we can come to a conclusion that's satisfactory to both of us. And quite frankly, I think we can. I think we can.

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I'm not in any way offended with what I think Senator Landis is trying to achieve, which is to give more recognition to the impact on the mother herself. And I'm all in support of giving recognition to the damage that she incurs in addition to the damage suffered by the child. So with that, I will ask the Speaker to pass over the bill. The bill will come back again either with an amendment that Senator Landis and I have worked out, which will be wonderful for all of us, or we'll just return to the debate where it is now and we may have to go to a cloture vote. But I'm hoping to avoid a cloture vote. I think you'd all appreciate that. That's my goal. And Senator Landis and I have worked on other issues over six years. He has always negotiated in good faith and I ever confidence he will in this instance, and I appreciate him offering a very constructive thought on how the bill might be improved. So thank you, Senator Landis, and if I can sublet some of Senator Chambers' time to Senator Landis, you're welcome to it.

SENATOR CUDABACK: Do you mind, Senator Chambers? Senator Chambers agrees. Senator Landis.

SENATOR LANDIS: Sitting down and working this out as expeditiously as possible, spending today or tomorrow, whatever as we can to take this matter up so it does not prejudice, schedule-wise, the resumption of consideration of LB 57 would be a goal that I certainly could ascribe to. This is not to try to use up the clock; fair chance for LB 57. I'll get to work today or tomorrow at Senator Foley's convenience. Thank you.

SENATOR CUDABACK: Thank you, Senator Landis. The Speaker has agreed to pass over without objection of the body. So ordered. Pass over LB 57E. Mr. Clerk.

CLERK: Mr. President, if I may, Senator Howard, just to clean up a pending matter, your amendment to LB 57, I understand you'd like to withdraw that, is that right? Thank you.

SENATOR CUDABACK: It is withdrawn. We now go to...give the Clerk time to get his paperwork straightened out. We now go to LB 454. The first vote will be to suspend the at-large...there are motions, I am told by the Clerk. Mr. Clerk, the first

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motion.

CLERK: Mr. President, the first motion I have with respect to LB 454 is by Senator Chambers. Senator, I have FA550...Senator, I must advise you that you're aware that it was drafted to an amendment? Okay.

SENATOR CHAMBERS: And for that reason, Mr. Clerk and Mr. President, I will withdraw that amendment.

SENATOR CUDABACK: It is withdrawn.

CLERK: Mr. President, the next motion up, Senator Mines. Senator, I have AM0652, but again I have a note that you wanted to withdraw that amendment, Senator.

SENATOR CUDABACK: It also is withdrawn.

CLERK: Mr. President, Senator Thompson, FA232. Senator, this is a floor amendment that was filed last May. I had a note in January that you wished to withdraw at that time.

SENATOR THOMPSON: That is correct.

SENATOR CUDABACK: It is withdrawn.

CLERK: Senator Thompson, the next motion I have is FA233. I do have a note, Senator, that you would like to withdraw FA233 and offer, as a substitute, AM2959.

SENATOR CUDABACK: Without objection...

CLERK: AM2959, Senator, am I right?

SENATOR THOMPSON: Correct.

CLERK: Okay.

SENATOR CUDABACK: So ordered.

CLERK: Senator Thompson would move to return to Select File for

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a specific amendment, specifically AM2959.

SENATOR CUDABACK: Senator, you're...Senator Thompson, did you wish to speak?

SENATOR THOMPSON: Yes, and maybe I should come up. What I'd like to get to is to withdraw until I get to the amendment that is AM2960, which I believe is the next one.

CLERK: Which one do you want, Senator? I'm sorry.

SENATOR THOMPSON: I want to continue to withdraw until we get to AM1477 with the amendment AM2960.

CLERK: So you want to withdraw AM2959?

SENATOR THOMPSON: Correct.

SENATOR CUDABACK: It is withdrawn.

CLERK: Senator Thompson, I now have AM1477 with a note that you'd like to withdraw and substitute AM2960.

SENATOR THOMPSON: Correct.

SENATOR CUDABACK: Without objection, so ordered.

CLERK: Senator Thompson would move to return LB 454 to Select File for specific amendment, AM2960. (Legislative Journal pages 1343-1344.)

SENATOR CUDABACK: Senator Thompson, you're recognized to open on your motion to return to Select File for a specific amendment.

SENATOR THOMPSON: Thank you, Mr. President, members of the body. This amendment would put the State Patrol in the position of not having to come back to the Legislature at some point to have either General Fund money to make sure that the costs were being covered or to have to come back because something specific was put in statute and needed to be adjusted. As I've mentioned

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to this body before, and I was honored to be chosen to chair a task force that was created by the Nebraska Legislature on the missions and responsibilities of the Nebraska State Patrol several years ago when we had added so many things to their lists of tasks that they weren't able to perform their mission-related duties due to the fact that, with a number of added responsibilities, there wasn't sufficient funding to be able to do everything that we require of the State Patrol. I felt this amendment was one that was appropriate to point to on the bill. The other ones, I felt, were really, really important and were brought to me by the chiefs of police in the area that I serve out of other concerns. And I think they're a part of a number of problems with this bill. This one, I guess because I've served on the Appropriations Committee and because I chaired that task force, I think we need to make sure that these costs are appropriate. And rather than set in statute an amount that in five years may or may not be sufficient to pay for the reissuing of the permit with all the requirements that are in the bill, that it would be appropriate to add this amendment on to get this piece straightened out. And the flip side of that is that I don't think we should be charging more than what it actually costs to issue these licenses either. So hopefully this would be a fair fee, one that could be adjusted based on actual costs, costs to get the information that needs to be there, one piece of which I think is quite a challenge and that is to deal with the issue of people who have mental illness, people who shouldn't be carrying weapons concealed due to the fact that they've been convicted...or not convicted but found mentally incompetent in other states, and that's part of the search that needs to happen in order for the Patrol to be assuring the public that this is safe. For those of you who are somewhat new to this process, we've been debating this for many years. And when the bill first was brought, it was placing this responsibility with the sheriffs. And I've spent a lot of time talking with the sheriff in the county that I represent about the problems that he saw in having...in becoming a shall issue state. To politically pull off that level of concern from the sheriffs who knew, who had better access to us, the proponents of this wisely were able to and other Governors didn't allow it but the current Governor had, or this must have been Governor Johanns, put this under the State Patrol, politically making it

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easier to pass the bill because they're a code agency and they have to do what the Governor says. So if the Governor is in favor of people carrying hidden guns everywhere in our state, then that Governor can just tell the State Patrol what they have to do. And so we don't have now law enforcement people who can talk directly to us about this other than our local law enforcement who have been talking to me about this for many, many years. But the agency that has to issue it, that issue hasn't really been talked about a lot with this particular bill because of the fact that the State Patrol is a code agency of the Governor and doesn't have that ability. At the minimum, we should make sure that they don't have to be taken...take their resources from other aspects of law enforcement in Nebraska and divert them to this. This should be a fair piece that's added to their budget. It should be a wash and it should be fair to the person who's applying for the permit. So that is why I chose this particular amendment of the ones on my list, because at least from the legislative perspective of how do we make sure that the things that we do as a Legislature on behalf of a small group of people who want something doesn't cost the other citizens of the state, either in terms of diverted resources or in terms of actual revenue that would have to be paid for these investigations in order to issue these permits. So I hope today we'll be able to put this amendment on. It's a good way for us to make sure that one of our state agencies is able to not be at a loss. It would be fair in terms of what we would and ever have to appropriate for this purpose. That is the reason I ask your support of this particular amendment. However, I am not in support of the bill and I will have other opportunities to talk about that this morning. But I wanted to be clear, as we start on this discussion of this particular amendment, what this amendment is about. And I think it's a good decision, regardless of where you stand on this particular issue, to make sure that the state agency that issues, and we will become a shall issue state, will have the resources it needs to be able to carry out the aspects of this bill and, on the flip side of that, that we aren't charging those who choose to apply for these permits any more than they need to be charged in order to cover the costs of the bill. Thank you.

SENATOR CUDABACK: Thank you, Senator Thompson. Heard the

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opening on motion to return, by Senator Thompson, for specific amendment. For discussion, Senator Chambers.

SENATOR CHAMBERS: Mr. President, members of the Legislature, I'd like to ask Senator Combs a question.

SENATOR CUDABACK: Senator Combs, would you yield to a question from Senator Chambers?

SENATOR COMBS: If I can answer it.

SENATOR CHAMBERS: Senator Combs, well, you'll be able to answer this one, I assure you.

SENATOR COMBS: Okay.

SENATOR CHAMBERS: Have you had a chance to look at Senator Thompson's amendment and listen to her explanation?

SENATOR COMBS: Yes, I have.

SENATOR CHAMBERS: Are you going to accept this amendment?

SENATOR COMBS: No, I don't think that we need to send it back to Select for that right now. Kansas and Missouri charge \$100 and \$150, respectively. Any program that you begin with a fee, you set a fee that seems reasonable with what the State Patrol and the DMV have already told us might be necessary to do the program, and then afterwards you would adjust it, just like we've done for state park permits, entrance fees for that. After the program has been up and going, then you can see if you need to adjust the fee either down or up, whatever it would take to cover. Because I agree it should cover the cost of the program, but we are in line with what a couple other neighboring states are charging right now.

SENATOR CHAMBERS: But you would agree this is a Nebraska bill, not a Kansas or Missouri bill.

SENATOR COMBS: Yes.

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SENATOR CHAMBERS: Okay.

SENATOR COMBS: Yes, I would.

SENATOR CHAMBERS: Okay. Have you looked at...

SENATOR COMBS: I don't think we need to take it back to Select for this amendment at this time.

SENATOR CHAMBERS: Have you looked at other amendments that are pending with which you might agree?

SENATOR COMBS: Yes, I have, the entire 12 hours of debate on this floor this time they've been there.

SENATOR CHAMBERS: And are there any of them that you agree with, that you would send the bill back in order to adopt?

SENATOR COMBS: Not at this time, but I have discussed other things with other people.

SENATOR CHAMBERS: Okay, so then we're just going to ride this until we get to the point where you either invoke cloture or you make an unsuccessful attempt to do so, correct? Just being practical, so we know where we are.

SENATOR COMBS: I'm going to say yes, and I'm going to put my light on so I can respond to that on my time.

SENATOR CHAMBERS: I have it. Thank you. Mr. President, members of the Legislature, this bill will go to cloture, unlike the one that Senator Foley had. Senator Combs is correct in saying that we've debated this bill for a goodly number of hours. I doubt that anybody's mind has changed with reference to the attitude regarding whether or not people ought to be going around armed with hidden weapons. But this bill is tied into other legislation that is pending, and I don't need to keep discussing that aspect of our proceedings. But I am opposed, categorically, to this bill. There is no justification for it which would be considered rational. Nebraska is not engulfed in a crime wave. Nebraskans in the western part of the state,

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where most of the scurrilous material that I receive, are constantly talking about the good life being lived where they reside. They have not been invaded by terroriats, although some of them down through the years have come here suggesting that if we did not instantaneoualy or sooner allow people to go about legally armed with hidden guns, they may face immediate death at the hands of some marauder or other. Yet, every succeeding year, they were right back here. Even Senator Combs is not in a position...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...to show where her carrying a concealed pistol has been necessary, or where she has thwarted an attack upon herself or somebody else by means of a concealed pistol. So all of that bogus stuff I don't even get into. When they want to say in other states there have not been serious problems, they have not watched news accounts, these news magazine stories where they show these people who have carried concealed weapons have committed crimes. One not too long ago dealt with an individual whose concealed weapon permit had been revoked a few days before he stopped a woman, pretending to be a cop, raped and murdered her with a handgun. So all this stuff about people suddenly becoming better citizens because they have hidden pistols is so much...

SENATOR CUDABACK: Time, Senator.

SENATOR CHAMBERS: ...bosh. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. On with discussion. Senator Don Pederson, followed by Senator Thompson. Motion to return.

SENATOR D. PEDERSON: Thank you, Mr. President. I would concur with what Senator Thompson has said about the fee situation. We have run into many aituations in the Appropriations Committee where we have given a duty to some entity, in this case it would be the Patrol, saying that you will do these certain things and then they find out that the costs are much greater than we have allocsted to the Patrol for the services that they perform, so

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something else has to suffer. And I think it's appropriate that in this situation that we give them the authority to determine what the charges should be in order to meet their overhead, because we do run into a lot of situations where there is inadequate funding for what we do. It's unusual, in a sense, for us to grant authority to an agency to fix fees like this, but I think that this is untrod territory that we're getting into here. We don't know what all the costs are. I know that I've visited with some of the Patrol officers and they don't seem to have a concern about liability, but I do have a bit of a concern about liability in this, because the Patrol is being asked to approve certain people for this, and the question may come up, had they adequately checked out the material to find out if this person was authorized to receive this license. And you're giving license to carry a gun, and the question is, have they adequately verified that that person is eligible for this; do they not have the accurate history of background and so forth? That I'm just a little bit troubled by the responsibility that the state may be taking on by this. And initially when I looked at the bill I thought this is a problem and...but they say it isn't a problem but they are also an agency of the Governor. Thank you.

SENATOR CUDABACK: Thank you, Senator Don Pederson. Senator Thompson, on your motion to return.

SENATOR THOMPSON: Thank you, Mr. President, members of the body. One of the areas that the State Patrol task force looked at was the issue of private investigator license investigation, and one of the issues was that the costs to the Patrol were higher than what we were charging for the license. There were also issues for the Secretary of State and the amount of time that they were spending on it. And so actually the Legislature did change that process to allow an appropriate fee to be charged. So this isn't any different than what was done a couple years ago to adjust on that private investigator issue. And, you know, I have...I came to this issue as something I...as kind of like last couple weeks ago when we were talking about the issue of family planning and, you know, it really wasn't anything that I thought I would be talking about or thinking about when I ran for the Legislature. This was something new.

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I wasn't...my dad was a hunter, but we...he was never into handguns, nor was my mother. My husband isn't. We're just not anyone who was concerned about needing guns around houses. And so I've listened to people, I heard from people, and like a lot of you that we've talked off the mike, there are people who have talked to me about this that, quite frankly, are pretty scary and very angry, very angry people. And when the sheriff and the chiefs met with me, when I first got elected, to talk to me about this, they had (laugh) some real concerns administratively about how they were going to handle those situations with those kind of people coming forward that had histories in their community, and how they were going to make an assurance of safety to the public. And the State Patrol is in exactly the same boat. I want them to have every resource at their fingertips (laugh) to be able to make sure that when they issue these handguns they aren't issuing it to people who have some stability issues that have been found as fact in other states, have been committed in terms of their mental health issues in other states. I want them to have the money and the resources to assure the rest of us that these are people that should be carrying these guns and that they...we aren't going to get sued as a state because they didn't have the resources in their department to make that search of records in other states dealing with these issues. And if it costs us a lot, you know, I realize you have constituents who are pushing because they really want to carry guns around. Well, fine, but let's at least make sure that the rest of us are safe and that you don't put people in situations with folks who shouldn't be carrying, and that it's recorded information somewhere. They need to make that a serious check. I don't want it skimmed out on because we didn't give them the adequate money to be able to do that. So hopefully we can adopt this amendment and make sure that the Patrol, administratively, has the people who can make those calls to the other states, make sure they're getting all those records that need to be in place, make sure that we aren't letting people slip through the cracks that are going to be carrying guns hidden in our communities. At least we should get this much done on this bill. Thank you.

SENATOR CUDABACK: Thank you, Senator Thompson. (Visitors introduced.) On with discussion, motion to return. Senator

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Combs.

SENATOR COMBS: Thank you, Mr. President, members of the body. I have here the fiscal note prepared by the Fiscal Office which shows that no General Fund revenue is anticipated to exceed expenses and, you know, I trust what the Fiscal Office does on a bill. Why shouldn't we? We do on every other bill. And they even had a little bit extra to accommodate cost of applications above the estimates. The State Patrol estimates the first year applications will be around 19,000, and then will drop to 5,000 annually, so with that drop, chances are the fee will probably need to drop because of the concurrent drop in the cost of administering the program. On the public safety issue, if you look on page 9, Section 13 of the Final Reading copy of the bill, it says any police officer having probable cause to believe that a permit holder is no longer in compliance with one or more of the requirements of Section 7, they can bring an application for revocation of the permit to be prosecuted. So, you know, if they have a working knowledge of a problem of any kind that they want to question the person about or feel that they're not safe, they have the right in the bill already to do that. I believe that returning to Select File in Senator Foley's bill is a bit different because Senator Landis has agreed to vote for the bill if his amendment is added. I don't think I'm in that situation with this bill here. This bill was introduced January of last year. It lay on General File for the better part of a year, and then it was debated for eight hours on General File, more than four hours on Select File, and most of the amendments that were filed to it were offered by colleagues that really intended to weaken the bill, and they have no intention of ever supporting it with or without their amendments. And there were a few serious amendments that the body was not able to consider because we've not been able to get past the weakening amendments. And to those of you who did file the serious amendments to the bill, I'm sorry that those proposals didn't get to see floor debate but, you know, I don't think it's inaccurate or unfair to say that that's not my fault. Now we're on Final Reading. We got a clean bill and it's time to enact it. The time for further change has passed. If I'm returned to the Legislature, there are issues that need to be attended in the future, I want to assure my colleagues that I'll

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be quite willing to take those up at that time. But the time to pass this bill is now. I believe that this concern about the financial situation adequately addressed in the fiscal note that was prepared by the Fiscal Office showing revenue the first year of nearly \$2 million, and revenue the second year of \$500,000, and I think that would be more than enough to pay for any additional expense for additional checks that could have to be made. Additionally, the concern, you know, about the people that have mental problems, their local police, I think Senator Thompson could inform them that they will have a right, if they read the bill, to, you know, get the guy's permit taken away. It's simple as that. Law enforcement is working together with this. The local law enforcement will work together with the State Patrol, as will anybody else. If you've got a problem, you know, let the police officer know and, you know, they'll take action. This has not been...had to be the case in other places. So again, I see this as a weakening amendment simply because this is not an amendment that if we do agree to take it back to Select to put it on that's going to cause the supporters to vote for the bill. The bill has been heard. It's a clean bill at this point. It's on Final Reading. Let's please move on. Thank you.

SENATOR CUDABACK: Thank you, Senator Combs. On with discussion of the motion to return. Senator Chambers, you're recognized, motion to return, Select File for specific amendment.

SENATOR CHAMBERS: Mr. President, members of the Legislature, since it's clear that this bill is not going to be returned, and we knew that from the beginning, we will proceed to a vote to cloture, and I'm sure that vote will be watched with great interest by everybody. Senator Mines had an amendment that he was offering, but it was clear he would not get to it, and I didn't want him to get to it because it was so rational, and I want this bill to remain irrational and for people to see what kind of legislation the NRA puts into the books of statutes of the state of Nebraska. The bill has listed certain facilities and locations where these hidden guns cannot be carried. I want to read to you those which the NRA, which is notoriously antiwomen, except when they want to use them, feel are not important and they place the burden on the ones who operate

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these facilities to make some kind of posting. But the NRA and Senator Combs don't want to place that burden on these facilities which the NRA said should be required under the law to be places where no hidden guns can be carried. Senator Combs thinks that a person who operates a childcare center should have the burden of saying you can't bring guns in here because childcare centers don't hold that stature which those listed entities enjoy. Domestic violence victim or sexual assault victim shelters, you should be able to carry a hidden gun there. Senator Smith had said, during the debate last time...and it's a good thing, by the way, by way of digression, that some proposal about not electioneering near polling places does not apply to the floor of the Legislature or Senator Smith would be rendered mute all of this session, because he's constantly electioneering. But on the floor of the Legislature, it's good that people can talk about anything they want to, and the constitution has made it clear that a person cannot be required to answer any other place for anything said on the floor of the Legislature to encourage the kind of debate and electioneering that take place here. Because by virtue of it being an open assembly, people have an opportunity to hear what the individual says and form a judgment for himself or herself. So these are the facilities, and I'll go right through them, which don't carry much weight as far as the women on this floor who support this crazy bill are concerned, and naturally the men who are dictated to by the NRA: childcare centers, domestic violence victim or sexual assault victim shelters, the residence of another person without his or her permission, a playground or a park, a public swimming pool, a public recreation facility, a youth center, an airport, a music concert, and a mental health facility. All of those are considered not to be worthy of being placed in the law...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...as those refuges from people toting these hidden pistols. I like to be very blunt on matters of this kind, because those who support this bill generally have prepared statements from the NRA or the NRA's lobbyist and they will read what it never occurred to them to say, and that's why they read it. It's why they didn't say it on debate. The NRA

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has its people who are writing statements for Senator Combs to read, and she can correct me if I'm wrong. If I'm mistakenly saying that they provide her with statements, then I will retract what I have said, and I will take Senator Combs' word for it. But she's going to have to tell me that no representative of the NRA provided her or her staff, who may have actually done the writing, with the statements that she makes. And I'm going to wait with bated breath to exhale until she speaks. But, Senator Combs, I don't know if I have enough time. How much time do I have, Mr. Speaker?

SENATOR CUDABACK: Your time is up, Senator.

SENATOR CHAMBERS: That's why I didn't ask you at this point. There was no time for you to answer, so it's over. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Senator Thompson.

SENATOR THOMPSON: I'll yield to Senator Chambers to finish his thought.

SENATOR CUDABACK: Senator Chambers.

SENATOR CHAMBERS: Mr. President, in fairness, I want to give Senator Combs an opportunity to enter the dock and respond.

SENATOR CUDABACK: Senator Combs, would you respond?

SENATOR COMBS: No, I...that statement was prepared by me with data that I have, and I use them as a resource for some data, but everything I say I have typed and prepared and written myself.

SENATOR CHAMBERS: But it is based on information fed to you by the NRA or a representative of the NRA. Is that true or false?

SENATOR COMBS: Some of it is from web sites, too. It's like any other lobbyist you get information from, Senator Chambers.

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SENATOR CHAMBERS: Well, here's all I'm asking you, because we're on...we're on Senator Thompson's time. Are statements that you've given fed to you by the NRA, and by that I meant the information that you type into your statement and read to us. Is it fed to you by the NRA? Why would you be ashamed if...

SENATOR COMBS: I'm not. I'm just saying it's from web sites, too. It's not from the NRA lobbyist person, which I think is what you were directing to me, that they had prepared my statement.

SENATOR CHAMBERS: Well, but the web site, is it an NRA web site?

SENATOR COMBS: Yes.

SENATOR CHAMBERS: Okay, so they do feed the information. What difference does it make where you get it from if you believe it? All I'm doing is stating a fact, and I think you've confirmed it.

SENATOR COMBS: Violence Policy Center also has a web site that I got information from.

SENATOR CHAMBERS: But my question was answered. Thank you.

SENATOR COMBS: You're welcome.

SENATOR CHAMBERS: And, Mr. President, I'm returning to Senator Thompson the remainder of her time.

SENATOR CUDABACK: Thank you. Senator Thompson, about a minute has been used.

SENATOR THOMPSON: Thank you. Thank you, Mr. President, members of the body. This is one of those difficult issues because when we run for office we have groups that are pretty well organized. They're the...when I filed for office, the absolute first piece of mail I got was from the National Rifle Association, wanting to know my position on this issue. They are active. They have a wonderful...you know, if everybody had the resources to have

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the e-mail system that they have that triggers all the e-mails that come to our offices, when I first got here, it was the phone calls and letters, they're very well organized. And we've only got...I can only think of two or three other groups in...that are this organized in Nebraska. They're nationally funded so they're able to do the things that give them kind of a bigger than life presence. And sometimes for us people think we're real tough and that we've got, you know, no...we don't let things bother us, but when you have people that call and accuse you of wanting people to be raped because they don't have a gun, that more crime is going to happen in the community because people don't have guns, it makes you feel bad. Well, that...if you...if you talk to law enforcement and people who deal with those kinds of situations every day, they tell you people ought to have pepper spray. They aren't going to shoot somebody that they made a mistake about. They aren't using deadly force. You don't have to aim. You don't have to worry about all the consequences of carrying a big gun around all the time. I sat down and listened to those people and, you know, pepper spray is a good idea. And you'll be more effective and you won't hesitate. And if it gets taken away from you, you won't be killed. I mean that's...I think we should listen to the experts in the field. But a lot of people got a lot of pressure put on them over this bill and I sympathize with all of you. You know, we have these conversations off the mike and you say to me, well, you know, I really don't want to...

SENATOR CUDABACK: One minute.

SENATOR THOMPSON: ...vote for this thing but, you know, all these people asked me and they made me make assurances. Well, you know, now is the time to vote and you don't have to. I mean, it's time to vote what you know is right and, you know, I know it's difficult. I know it's difficult, but let's think about the majority, the majority of people in our community. I mean, they came up to me after the first two votes, people I hardly knew, and said, you know, what the heck is going on? And I said to them, well, there isn't a group that lobbies against this. The first year I was here the handgun people, the Brady group, and it was fairly close to after President Reagan was shot and they had some resources then, they had a lobbyist and

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they worked on the bill and it didn't pass. And when the sheriffs were part of this bill, they worked the bill and it didn't pass. But now all those people...

SENATOR CUDABACK: Time, Senator.

SENATOR THOMPSON: ...have been pulled off and so it's just us. Thank you.

SENATOR CUDABACK: Thank you, Senator Thompson. Senator Schimek, motion to return.

SENATOR SCHIMEK: Thank you, Mr. President and members. I stand in support of the motion to return to Select, even though I know that that's probably a futile gesture, and so I need to say what I need to say before this debate is over. You know, I think there are about 500 towns and villages and cities in this state, and it is conceivable that every one of them are going to have this issue on their council or board agenda before it's all over. And, you know, Senator Janssen, I think, thinks that will be okay, and maybe it will. It will give local control, certainly, to each entity, but I also know that it's a very emotional, a very emotional issue, and politica at the most local level is the most emotional. Any of you who have served on city councils or county boards know that. And so I think that...let's say not all of them do it. Let's say only in half of them or only in the largest cities in the state does the issue come on the agenda. It will be a protracted discussion. I don't know if the NRA has the resources to be in every nook and holler in this state, fighting for this issue, but I suspect they do have those kinds of resources. I think that it...I'm glad that that at least is possible. I think that my own city will refuse to implement concealed carry. We have a pattern and a history and perhaps a culture about that. I may be wrong, wouldn't be the first time in my life, but I really don't think that we will allow guns to be carried concealed carry in Lincoln, Nebraska. If there are other towns and villages and cities throughout the state that have the same feeling about this, I think the enforcement that Senator Thompson talks about is going to be even more problematic and more difficult. Senator Combs says that she will be back next year to correct

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what isn't done in the bill this year, but somehow I think that meanwhile those decisions are going to be made in our cities and our towns, and then are you going to come back and tell them that they can't make a decision not to implement this? I think that will be very problematic. I guess I think that I want to say some more things, but I have promised to give part of my time to Senator Johnson, so I am going to give him the rest of my time and turn my light back on. Thank you.

SENATOR CUDABACK: Senator Johnson.

SENATOR JOHNSON: Senator Cudaback, members, and thank you for the minute, Senator Schimek. Just not going to dwell on this, but when this bill came before the Legislature before I asked this question: Why is it that the people that...

SENATOR CUDABACK: One minute.

SENATOR JOHNSON: ...are backing this legislation the strongest are the safest people in the safest place on earth, and they are the ones that want the concealed weapons? I don't understand that. Now, Senator Combs, something else dawned on me this morning during the discussion when we talked about all the angry e-mails and conversations that those of us that voted against this bill the first time around received. Are there any studies that will show that these people will become less angry carrying a concealed weapon? Thank you.

SENATOR CUDABACK: Thank you, Senator Schimek and Senator Johnson. Further discussion, motion to return? Senator Howard, followed by Senator Chambers.

SENATOR HOWARD: Thank you, Mr. Chairman and members of the body. And I, too, stand in support of returning of this bill to Select File, but for a bit different reason than Senator Thompson has brought up. I've had the discussion with Senator Combs and I have had great appreciation of her shared concern with me regarding children that are in the custody of the state that are placed in homes other than their own. She has drafted an amendment and put it on her bill regarding the concealed carry not superseding the regulations that are in place for

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foster homes, and I'm very appreciative of this and have certainly expressed that to Senator Combs. This amendment, AM2142, states that Concealed Handgun Permit Act shall not supersede policies or rules and regulations adopted and promulgated under the Foster Care Review Act with respect to prohibiting handguns in foster care facilities, child caring agencies, and child placing agencies. Senator Combs explained to me that this amendment was quite far down on the list and wouldn't be able to be addressed this year, but I will tell you that children in foster care have come from homes of violence and abuse, have seen weapons, have seen guns, and when that child will go into the foster mother's purse looking for money, as oftentimes happens, and will find a handgun, things that we don't want to have happen can. And I've attended the funerals for too many foster children to not stand and speak on this issue. I ask you to consider this. This amendment is important. I thank Senator Combs for agreeing with me that it's important. To have the Handgun Act move forward without addressing this really is turning a blind eye to a problem and an even more critical potential problem. I thank you for the time and I return the balance to the Chair. Thank you.

SENATOR CUDABACK: Thank you, Senator Howard. Further discussion? Senator Chambers.

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I'm going to ask Senator Combs a few questions. And in order that she not get heartburn, she knows that I'm fond of her, so I'm not trying to put her down. These are not trick questions, and if anyone has asked what you think is a trick question, simply say TQ, and I'll drop off, because we speak in "alphabetaetical"--people can't say that let alone spell it but I'll say it one more time--we speak "alphabetaetically" to each other. Senator Combs, do you have an amendment pending which would take away the right of the city of Omaha to prohibit the carrying of concealed weapons?

SENATOR CUDABACK: Senator Combs.

SENATOR COMBS: That's called preemption, and I am assuming...I've operated on this bill all along regarding the

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future legislation, local preemption, other aspects of the bill, I included that amendment on the...in Select File because of the concern that had been brought. But I really can't respond to that today and...

SENATOR CHAMBERS: But here's the question, and maybe you can. Do you have an amendment pending that would address the right of a city to prohibit the carrying of concealed weapons? Do you have such an amendment pending?

SENATOR COMBS: Not on Final Reading.

SENATOR CHAMBERS: Did you offer such an amendment to the bill?

SENATOR COMBS: Earlier in the bill I did when the concern was raised, when I was under the...with the understanding that that might change some opinions or cause people to...that that would make the bill better.

SENATOR CHAMBERS: Senator, I don't want to be argumentative, but as I look at the listing of amendments pending on this bill at this stage, I see under your name AM1824. Next to that are the words "withdraw and substitute AM2090," and AM2090 deals with the powers of a city to do various things.

SENATOR COMBS: That is correct.

SENATOR CHAMBERS: And one of the things that the city currently is authorized to do is regulate or even prohibit the carrying of concealed weapons. Would you agree that your amendment...

SENATOR COMBS: That is correct.

SENATOR CHAMBERS: Okay. So there is an amendment pending right now, which is yours, which would be designed to take away the power of a city to prohibit the carrying of concealed weapons.

SENATOR COMBS: To avoid having a checkerboard of state and local ordinances.

SENATOR CHAMBERS: That's not the question.

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SENATOR COMBS: Well, that's my answer.

SENATOR CHAMBERS: You're getting ahead of me. But that amendment is pending now, do you agree?

SENATOR COMBS: Yes, I do.

SENATOR CHAMBERS: Okay. Now...and I want to give you a chance to give you a rationale, but I want to take it step by step. If your amendment is not adopted, as it will not be adopted, the largest city in this state would retain the power to prohibit the carrying of concealed weapons even if this bill passes into law. Is that true?

SENATOR COMBS: You're an attorney trained and I am not, and as I understand the bill, it is preemptive.

SENATOR CHAMBERS: Without your amendment.

SENATOR COMBS: Yes.

SENATOR CHAMBERS: If an amend...if law is on the...first of all, did an NRA lawyer tell you that?

SENATOR COMBS: I don't remember who told me that at this point. I know that it was two or three people that I got the information from.

SENATOR CHAMBERS: Okay. I'll...

SENATOR COMBS: I don't know if I had that specific information with Keith Wood or not, or specific conversation.

SENATOR CHAMBERS: I will...I will...I will accept that. If we...

SENATOR COMBS: Ron Jensen.

SENATOR CHAMBERS: If we have a law on the books right now and another law is passed that makes no reference to that existing

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law, that existing law is not repealed, is it? If we don't say it's repealed, then it's not repealed, is it?

SENATOR COMBS: No, it's usually, I think...or that's included in the verbiage of the statute...

SENATOR CUDABACK: One minute.

SENATOR COMBS: ...that is...has the repealing language--all sections repealed. Is that...is that what you're getting at?

SENATOR CHAMBERS: Right. And any section that's not in that repealer is not repealed. Would you agree with that?

SENATOR COMBS: Yeah.

SENATOR CHAMBERS: Okay. And since we don't have much more time, that's all I will ask Senator Combs, because what I wanted to establish is that there is an amendment which was designed and is designed to take away the right of a city to prohibit carrying concealed weapons. And I'll continue the discussion when I'm recognized again. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Further discussion, motion to return? Senator Smith, followed by Senator Combs.

SENATOR SMITH: Thank you, Mr. President, members. I was going to remain quiet, but Senator Schimek provoked me, and so I must respond and perhaps enlighten Senator Schimek on the fact that towns all across Nebraska are not so concerned about the safety issues here, and it's important to note that. And I speak as a former member of the Gering City Council that (laugh) was not overly concerned, or actually concerned at all, about firearms and what firearms might do in the hands of law-abiding citizens who have gone through a background check and otherwise. And so I just seek to enlighten the body that there are not the public safety concerns that Senator Schimek is trying to portray across Nebraska. The activists on this issue are characteristic of larger cities. That's generally where they live. And they might have some background and experiences that are far

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different than rural Nebraska. But it's important to note the fact that there is not the fear of firearms across Nebraska, as Senator Schimek...at least I perceive to be portraying across rural Nebraska. That is my concern. And certainly Nebraska is a powers granted state, so local entities cannot do something that the law at the state level is silent on or does not expressly forbid or allow. It is assumed to be forbidden unless it is expressly mentioned in state statute. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Smith. Senator Combs.

SENATOR COMBS: Thank you, Mr. President, members of the body. I want to make it clear that people are carrying concealed right now. I asked the Crime Commission for some data that they compiled and then were getting it...were taking a second look at it again, but the kinds of violations as a group with weapons per year was about 1,000, and we have 28-1202 on the books now. The carriers under 28-1202 even asked for an amendment to decrease the penalty from a first-degree misdemeanor to a fourth-degree misdemeanor, and these are people who do not want to take the training and they don't want to be fingerprinted. They still have the rights under 28-1202 to do that. They are carrying right now. If a city has not had a problem with these people that are lawful, legal, law-abiding citizens carrying, then with the further public safety insurance of these people having training and a criminal background check, these 28...Section 28-1202 of the law, these people that are carrying under the affirmative defense are not required to have any training. That is a public safety loophole, but we left it alone. We left those people. We did not bother that. That's existing statute, and we have people carrying right now. So there has not been a need, as Senator Smith has said, for city legislation. If they want to and they see the need, then they will have to justify that need and they will act accordingly. That's not what I'm talking about with my bill today. My bill, the intention is that it's preemptive. I'm not an attorney and I don't have the answer to that question. And I don't think that it's a question that must be answered today, and it's one that cannot be answered today. It's also a condition that if it's added to the bill and this bill is taken off of Final

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Reading and goes back and is laid over, the people that are proposing this amendment will still not vote for the bill. So in that way, it is not a constructive amendment, as Senator Landis' was to Senator Foley's bill. So respectfully, I am going with what I have in the bill. It is a good bill. It is a clean bill. And the questions that have been posed are not serious enough, in my mind, at this point, to warrant taking it back to Select. It's on Final Reading. It's had full and fair debate. It's been around for a year. Where were these people since January 2005 with all this fear mentality of legally certified permitholders? Where have they been for a year? This thing laid on General File for almost the better part of 14 months with nothing being done. So just because a weakening amendment begins to develop legs and gets some conversation going on it, with no intention of being...causing support for the bill, I don't see that as a reason to take this bill, that a clear majority of the body has supported, a clear majority of Nebraskans, off of Final Reading to discuss something that is not going to make the bill in a shape that they would support it. That's the whole point of taking a bill off of Final Reading. It's to make it in a shape that will cause more people to support it, to fix it...

SENATOR CUDABACK: One minute.

SENATOR COMBS: ...in a way that they say, well, we see this problem, you fix this problem, we're going to support the bill, by and large, and it's usually an agreeable thing. So at this point, this is not, you know, the same spirit with which these amendments have been offered so, agsin, I just would like to proceed. Thank you.

SENATOR CUDABACK: Thank you, Senator Combs. Senator Schimek, followed by Senator Stuthman.

SENATOR SCHIMEK: Yes, thank you, Mr. President and members. I would like to go back a little bit to the discussion that Senator Chambers and Senator Combs were having a bit ago about the amendment that Senator Combs does have filed on the bill, and about the existing statutes that give cities the power to regulate concesled carry in their own cities. Senator Combs, I

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don't...I don't know if you've looked carefully at Section 15 of the bill, but I would like to have you have a little discussion with me about Section 15, and if I could, I'd like to read from that. It says, beginning at the top of page 12, a permit holder may carry a concealed handgun anywhere in Nebraska, except, and then it goes through the laundry list of places where you can and...or can't carry a concealed weapon. It's the very last part of that paragraph that I want to ask you about. It says, "or into or onto any other place or premises where handguns are prohibited by law or rule or regulation." What does that mean, Senator Combs?

SENATOR CUDABACK: Senator Combs.

SENATOR COMBS: What it says.

SENATOR CUDABACK: Senator.

SENATOR SCHIMEK: What's a law, and what's a rule, and what's a regulation?

SENATOR COMBS: Law, rule or regulation, if they're prohibited, they're not permitted to be there.

SENATOR SCHIMEK: That would be by city ordinance or any kind of rule or regulation like that?

SENATOR COMBS: If that's the way it would be construed by an attorney.

SENATOR SCHIMEK: Well, I don't...I think this is pretty clear language. I am pointing it out because I think within your own bill it says that you can carry a handgun anywhere, except where prohibited by law or rule or regulation. And so the argument that you made a little while ago to Senator Chambers, that you didn't think just because it existed somewhere else in a statute that it would give...necessarily give cities the ability to do that, I think it says right here in your own bill that indeed they do have that authority. And I know that I'm just...I'm catching you kind of maybe unawares here, but I wanted to call that to your attention and to the attention of the body, because

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I disagree with you. I think that the bill doesn't exempt cities from enacting their own ordinances on this. If I'm wrong, I'd like to be...I'd like to be instructed in that. That's the way I read it. Thank you.

SENATOR JANSSEN PRESIDING

SENATOR JANSSEN: Thank you, Senator Schimek. Senator Stuthman.

SENATOR STUTHMAN: Thank you, Mr. President, members of the body. First of all, I do support the returning it back to Select File. And I also would like to comment and agree with Senator Johnson, when he made his statement before. I truly think that is very true. One of the things that we continually try to discuss and the fact that Senator Combs continually brings up is, you know, we have people carrying concealed carry right now. Yes, I'll totally agree with that. But those people are not supposed to be doing it. It's illegal to carry. The chances of those individuals utilizing using the gun are going to be very, very slim. I did receive a letter several days ago on the issue of that murder that was in Fort Collins, Colorado, and I'll just read you a couple of things that are in that letter. I think individuals, law-abiding citizens, once that they do have the ability to carry, that gives that individual a sense of greater power than they have in their own body and mind. If they have the concealed permit, if they have the gun on them, if they get themselves into a situation that they feel that they can't handle mentally or physically, they're going to rely on the weapon, and I hope that doesn't happen. But we are continually, you know, dealing with something that law-abiding citizens should have the right to carry. A thing that has been brought up to me many, many, many times by the organized group that is in favor of this is that we need to be able to take control when law enforcement isn't available. I don't know whether that would be the right thing to do. And I think some innocent law-abiding citizens are going to get themselves into trouble if that does happen. But they just continually say, you know, well, we need to be able to take control, and the only way that they can take control is if they have some method of greater power than that they can mentally and physically do. Thank you.

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SPEAKER BRASHEAR PRESIDING

SPEAKER BRASHEAR: Thank you, Senator Stuthman. Senator Chambers, your light is on, but you have spoken three times. Mr. Clerk, you have a motion on the desk?

CLERK: Mr. President, I do. Senator Combs would move to invoke cloture on LB 454, pursuant to Rule 7, Section 10.

SPEAKER BRASHEAR: Senator Combs, for what purpose do you rise?

SENATOR COMBS: Yes, I'd like a roll call vote in reverse order, please, and the house is under call, I understand, with Final Reading. Have everybody check in, please.

SPEAKER BRASHEAR: Senator Combs has requested that everyone check in. Would all members present please check in. The house is under call, by reason of Final Reading. Senator Brown and Senator Kremer. Thank you, Senator Brown. Senator Kremer. Members, our first vote is the motion...on the motion to invoke cloture. Senator Combs has requested a roll call vote in reverse order. Mr. Clerk.

CLERK: (Roll call vote taken, Legislative Journal page 1344.)
36 ayes, 10 nays, Mr. President, on the motion to invoke cloture.

SPEAKER BRASHEAR: The motion to invoke cloture is adopted. Members, we will dispose of the pending matters to the bill, in reverse order. Our first vote now will be upon the motion to return to Select File. All those in favor signify by voting aye; those opposed, nay. Have you all voted? Please record, Mr. Clerk.

CLERK: 8 ayes, 30 nays, Mr. President, on the motion to return the bill.

SPEAKER BRASHEAR: The motion to return to Select File is not adopted. We will now vote upon the motion to dispense with Final Reading. All those in favor signify by voting aye; those

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opposed vote nay. Have you all voted? Mr. Clerk, please record.

CLERK: 36 ayes, 7 nays, Mr. President, to dispense with the at-large reading.

SPEAKER BRASHEAR: The motion to dispense with the at-large reading is adopted. Mr. Clerk.

CLERK: (Read title of LB 454.)

SPEAKER BRASHEAR: You've heard the title. All those in favor signify by voting aye; those opposed vote nay. Mr. Clerk, please record.

CLERK: (Record vote read, Legislative Journal page 1345.)
33 ayes, 12 nays, 3 present and not voting, 1 excused and not voting, Mr. President.

SPEAKER BRASHEAR: Thank you. LB 454 is adopted. Mr. Clerk.

CLERK: (Read LB 454A on Final Reading.)

SPEAKER BRASHEAR: All provisions of law having been complied with, the question before the body is the adoption of LB 454A. All those in favor signify by voting aye; those opposed, nay. Have you all voted? Mr. Clerk, please record.

CLERK: (Record vote read, Legislative Journal page 1346.)
36 ayes, 4 nays, 8 present and not voting, 1 excused and not voting.

SPEAKER BRASHEAR: LB 454A has been adopted. Members, while the Legislature is in session and capable of transacting business, I propose to sign and do now sign LB 454 and LB 454A. Mr. Clerk.

CLERK: Mr. President, some items: An amendment, Senator Schrock, to LB 1226; Senator Schimek, LB 239; Senator Erdman, LB 239; Senator Wehrbein to LB 489; all amendments to be printed, Mr. President. That's all that I have. (Legislative Journal pages 1346-1347.)

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SPEAKER BRASHEAR: Mr. Clerk, LB 845.

CLERK: Mr. President, LB 845, a bill by Senator Landis. (Read title.) Bill was introduced on January 4 of this year, referred to the General Affairs Committee. Bill was advanced to General File, Mr. President.

SPEAKER BRASHEAR: Senator Landis, to open, please.

SENATOR LANDIS: Thank you, Mr. Speaker, members of the Legislature. LB 845 got a difference of opinion. Senator Cunningham has got an amendment. We should be able to do this expeditiously. This was reported out of the General Affairs Committee unanimously at the time. I'm not sure that unanimity still exists because there is some resistance by the convenience store and grocery stores and restaurants to this bill. LB 845 was a recommended piece of legislation brought to us by the Liquor Control Commission. Two ideas in it: One, it says that a retail license may be issued to a qualified applicant, rather than shall be issued to a qualified applicant, if the commission finds all of the existing statutory circumstances. And then it adds to the last one, or one of the middle ones. Here's the existing language: "The existence or absence of other retail licenses or craft brewery licenses with similar privileges within the neighborhood or community of the location of the proposed licensed premises," that's existing law, and here's the new idea, "and whether the issuance of such license would result in or add to an undue concentration of licenses with similar privileges and, as a result, require the use of additional law enforcement resources." It's called the density factor. It's an idea that came from Colorado. There it was tested for constitutionality and was upheld...upheld. That's what I get from the Liquor Control Commission. You'll find a large number of proponents. They include Lincoln, Omaha, Mothers Against Drunk Driving, the Liquor Control Commission, et cetera. But one of the most powerful pieces of testimony we had was by Tom Casady, the police chief in Lincoln. He says, look, you take a look at the city of Lincoln on Saturday night and we got a problem. It's from 11th to 14th on O Street. In that general area, last year there were 1,600 police calls. On a Saturday

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night, there's an average 5,000 people on the street, Friday night. By the way, a large number of those 5,000 people have been drinking. There are car accidents, there are fights, there are crowded sidewalks. The number of people strains law enforcement and brings people, the redeployment of our existing police force, into that area. There are 109 liquor licenses in that area. The result is that people are...the police are seeing people at closing time who are more drunk than they are at any other previous time, and they all get into their cars and leave from that location. Now, the question is, should Lincoln be able to take into account that phenomenon when saying yes or no to a new liquor license on top of the 109 liquor licenses that are there now? Or should they be able to say, you know what, we're using enough of our police resources in that neighborhood; you can have a liquor license but put it in the suburbs someplace? That is the authority that we give to municipalities and the commission, ultimately, with this language; that the density factor is a legitimate factor to take into account. Understand it does not allow you to create a maximum number of licenses. It simply says that you do have the power to see to it that there isn't an undue concentration in one area. I would ask for the advancement of LB 845. I don't believe there are any committee amendments. It was reported out of committee and, if I've got the...well, take a look at the gadget and you'll see that the committee report and it will list the folks that are in favor and opposed. The opponents included the retail groups, the grocery stores and the convenience stores. By the way, ask yourself this question: If you're a grocery store or convenience store, have you already got your liquor license? Yeah, you do. If you're a new convenience store and a grocery store, are you going to go in from 11th to 14th Street in Lincoln? No. Are you going to go into the Haymarket area in Omaha? No. Are you going to go into the tenderloin area of some large Nebraska community? No. You're going to go to the suburbs where you're not going to have this problem. My guess is that this is just that tinderbox sensitivity about somebody who just can't stand the idea of not having, you know, total freedom to do whatever they want to do, whenever they want to do, wherever they want to do it. And the truth of the matter is I cannot foresee convenience stores or grocery stores being stopped from going places. I will tell you

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where I think there is a chance of likely discipline, and that's in a stand-up bar. You put too many stand-up bars in a row and you'll have significant police action. That's where we know, by license type, the most police response is--in stand-up bars--and that's where this statute is going to wind up being used. I ask for the advancement of LB 845.

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: You've heard the opening on LB 845. Mr. Clerk, motion to the bill.

ASSISTANT CLERK: Mr. President, Senator Kruse would offer AM2320. (Legislative Journal page 694.)

SENATOR CUDABACK: Senator Kruse, you're recognized to open on your AM2320.

SENATOR KRUSE: Thank you, Mr. President and members. This amendment is fairly straightforward and it will be some relief to the body to know that we can't find any opposition to it. There was no negative testimony at the hearing. Though it's a small item, we decided to put a bill in on it so there could be a hearing and we could know what people might be thinking. There was no negative testimony and it was passed out of the committee as LB 1160 on a vote of 7-0, with 1 absent. What the...this amendment does is provide that we have an authorized course for servers and managers of liquor outlets. This could be one which the Liquor Control Commission created, but it doesn't need to be. There are a number of good courses available from the industry, and they are acceptable. The point that we're making here is that it shall be ours to authorize, ours to certify through the Liquor Control Commission that this is a good course for servers and managers. Then those individuals who take the course, complete that, will be certified by us, by the Liquor Control Commission. That has a number of advantages to it. One of them is that this young woman who completes this course can carry her certification with her and when she moves to another employer. It's not from her employer, it's not from the industry; it's from us. Another point that I want to make on this, that taking this course is

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not mandatory. It is to the advantage of the establishment to do this because it will help them, as they appear before the Liquor Control Commission in reapplication and so on, that they have been responsible and had their employees take the course. I'm sure there will be a question on the floor as to why do I care about this. Well, I care greatly about it because servers are in the best position to protect the rest of us from impaired drivers. That is a concern of mine, as you're well aware. I'll not dwell on it, except to recognize that police are out there to help protect us, but no one comes closer to the point of protecting us than the server who is, by law, required to cut off somebody when they get too much, and is required through this course and is informed through this course as to how to deal with somebody who's leaving and appears like they're going to start driving. They are in a position to protect us. And this is not an easy task that we're asking these servers to do, but it's enhancing public attitude on the matter and the training, to me, is just essential that we help these persons that are moving in and out of those positions to understand the consequences of the state law that's already in place--there are four categories of persons that they cannot serve--and to know how to do that and how to do it well, and to protect all of us in the doing of that. With that, I will close, Mr. President.

SENATOR CUDABACK: Thank you, Senator Kruse. You've heard the opening on the Kruse amendment. Discussion? Senator Preister.

SENATOR PREISTER: Thank you, Honorable President, friends all. I was just over at the printer getting a copy of some information that I just found out about. I am in support of what Senator Landis is trying to do, and although I didn't fully hear all of the things Senator Kruse said, I believe I'm also supportive of his amendment. But I wanted to address the density issue, because I think it's important. Certainly we could spend a whole lot of time talking about the density of liquor licenses in Whiteclay, Nebraska, which is an unincorporated village of 14 people, where approximately 12,000 cans of beer are sold through, I believe, four current liquor licenses. I don't think it would be much of a stretch to say four liquor licenses in a community of 14 people is too dense, and I think that the Liquor Control Commission could certainly

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do something about that, and if this "shall" were changed to a "may," they would be able to. That's an issue and a major one that's an embarrassment to this state; it's not the only one. However, I think what I will do is make copies of this information that I have, after I briefly tell you about it, but it talks about some information that was gathered in both Maryland and in San Diego, California, and it talks about the relationship between liquor license density and domestic violence. The more dense the liquor licenses in their establishment, the more likelihood of domestic violence. And I certainly don't think we want to contribute to more domestic violence. It's all too serious a problem already. But these studies and the relationship, I think, is certainly an endorsement of what Senator Landis is attempting to do here. On a more local level, in my district, I have a church that's currently concerned about a new application going in almost next door to the church, but just over the 300-foot limit. They're concern is that within six blocks of the church there are already currently six liquor licenses that have been granted. Three of them are bars. The church sees the spillover problem of the littering, the broken glass on their parking lots where the children play, and we have restrictions to keep establishments away from parks and churches and, yet, 300 feet is not a very great distance. And with six licenses already within six blocks, this particular church is concerned and, yet, it appears that this new license is going to be granted and the Liquor Control Commission is essentially saying, we have no choice, we have to grant it. Density is not as much of a factor as it needs to be, and Senator Landis' legislation I think would at least allow the Liquor Control Commission to have more discretion and they would not have to automatically issue that liquor license where density is already a problem. I have these two handouts. I will initial those. I would ask a page if one would come to me and I will initial these so they can be copied and then handed out to everyone, and you can read yourself about the relationship of density and domestic violence. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Preister. Further discussion? Senator Janssen.

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SENATOR JANSSEN: Thank you, Senator Cudaback and members of the Legislature. I stand in support of Senator Kruse's amendment and in support of the underlying bill. Senator Kruse's amendment was originally LB 845 and...or LB 845 is the carrier of the bill, and we have Senator Kruse's amendment, which was LB 1160, the beverage server training program. The amendment/bill is revised by committee amendments to make a few changes and make it more clear, but I believe it is something that will help those who have liquor licenses that their employees at least understand the liquor laws and understand the ramifications of consuming too much alcohol. With that, I hope that the body adopts the amendment, AM2320, and the underlying bill. Thank you.

SENATOR CUDABACK: Thank you, Senator Janssen. Further discussion? Senator Aguilar, followed by Senator Louden.

SENATOR AGUILAR: Thank you, Mr. President, members. I, too, rise in support of both the amendment and the underlying legislation. My community has problems with the particular legislation that changes the terminology from "shall" to "may" for a couple years now and been dealing with different issues, including oversaturation of licenses, as well as, you know, licenses being issued to people of questionable character. I just think this should be a lot more of a local control issue and as well as I think it's a great idea to provide training at the same time. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Aguilar. Further discussion? Senator Louden.

SENATOR LOUDEN: Thank you, Mr. President and members. First, I'd like to address a matter that Senator Preister brought up, that whenever he gets a chance, he always talks about what we can do to cure Whiteclay. If we just closed up the liquor stores, why, that would be the end of the problem. Sure, it would probably be the end of the Whiteclay, but the problem would probably move on down the road about ten miles and you'd probably have a bigger problem. I would ask sometime if Senator Preister would really research the matter and find out what the underlying problem really is. It isn't the amount of liquor

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stores in Whiteclay or whether there's liquor available in Whiteclay, because it just so happens Whiteclay gets to be picked out because it's Nebraska, and there are ways that they're trying to get the revenue off of that liquor sold in Whiteclay onto South Dakota or onto the reservation. They sell just as much liquor out of Scenic and some of the other towns on the other side of the reservation, but they're in South Dakota, so there's no complaint of where the liquor...or the tax revenue goes up there. The next thing I would like, I was wondering would this affect licenses that are now in place. I was wondering if Senator Landis would yield to a question, please.

SENATOR CUDABACK: Senator Landis, would you yield? Yes, he will.

SENATOR LOUDEN: Senator Landis, would the liquor licenses that are now...that are now in place, that people already have, would this bill have any effect on them? Would it cut down the numbers on...

SENATOR LANDIS: No, it doesn't affect renewals, because those licenses have been granted. Your renewal is simply on whether or not you've been a good actor during the pendency of your holding the license. This section would not apply to that.

SENATOR LOUDEN: Now, who decides what's too many or too thick? Who's going to decide that?

SENATOR LANDIS: Our regular regulators in this area--city councils and the Liquor Control Commission--just exactly like every other piece of decision making in this field, Senator Louden; no change.

SENATOR LOUDEN: Now...okay, then...

SENATOR LANDIS: Basic law.

SENATOR LOUDEN: ...would we be like some of the other bills we've had, if someone didn't agree with it then they could take it into district court and to see about getting the...getting it changed?

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SENATOR LANDIS: In fact, the area of withholding licenses is the source of a rather good deal of lawsuits. People who've been denied licenses sue quite frequently and try to get the absolute maximum number of licenses out there, and they use the courts pretty frequently.

SENATOR LOUDEN: Now say there's three liquor stores in Hyannis and there the main street is, what, two blocks long and they all have to be side by side, maybe, in the one block. What would be the difference if there's three liquor stores side by side in Hyannis and three liquor stores down here in Haymarket Park side by side? Would they still get the same consideration?

SENATOR LANDIS: Gosh, I trust the Hyannis city...the Hyannis City Council to be able to figure that out, LeRoy. Don't you?

SENATOR LOUDEN: Well, I don't know. We're passing a law, though, to put it up here in statute, so...

SENATOR LANDIS: And do you have some faith in the Hyannis City Council there...

SENATOR LOUDEN: Well, they can...

SENATOR LANDIS: ...to be able to make a sensible decision that fits their community? I do. I hope you do as well.

SENATOR LOUDEN: Okay.

SENATOR LANDIS: It's your district, isn't it?

SENATOR LOUDEN: Now, they can...they can figure that out now, can't they? It...

SENATOR LANDIS: Oh, but they can't use existing law to say no.

SENATOR LOUDEN: But do they have laws or anything in statutes that if...and the county commissioners...

SENATOR LANDIS: They couldn't use the density idea now.

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SENATOR LOUDEN: Okay.

SENATOR LANDIS: This gives them a tool that they can choose to use or not, and there are cities that want to use it.

SENATOR LOUDEN: I would just question whether...

SENATOR LANDIS: It's called local control, Senator Louden.

SENATOR LOUDEN: Right, it's local control, and that's what I thought we had now, because I thought the county commissioners at the time are the ones that rule on...

SENATOR LANDIS: Ah, no, we don't...well, we do, but on a limited basis, and that is to say if we don't...

SENATOR CUDABACK: One minute.

SENATOR LANDIS: ...create statutorily exactly the standards, the city can't go off the...they can't go off the page. They have local decision making, but only with respect to the existing standards that we give them and set out for ourselves.

SENATOR LOUDEN: Okay. Then for your Haymarket, it'd be your city council would decide that for here in Lincoln?

SENATOR LANDIS: And then the Liquor Control Commission.

SENATOR LOUDEN: And the Liquor Control?

SENATOR LANDIS: That's a right.

SENATOR LOUDEN: Okay.

SENATOR LANDIS: What happens is, if you get turned down locally, you can go up to the state and override the local.

SENATOR LOUDEN: Okay. Thank you.

SENATOR LANDIS: Yeah.

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SENATOR CUDABACK: Thank you, Senator Louden. Further discussion? Senator Chambers.

SENATOR CHAMBERS: Mr. President, there is an area of Omaha which would not be familiar to anybody who does not live there, perhaps, known as Orchard Hill, community around 40th and Hamilton Streets. There is an excess of liquor outlets now. The people in that community, meaning citizens, residents, churches, civic associations and all of those various entities and organizations which make up a community and combine to put forth efforts to improve their community, tried to stop another liquor outlet from coming there. Subsequent to its having been allowed, I believe it's the one where a shooting occurred and litigation and prosecutions. But at any rate, the people, as Senator Landis pointed out, could not argue and have the commission accept their argument that there are too many liquor establishments in this area and have the commission, on that basis, reject an additional liquor outlet. The city of Omaha does not always do what's in the best interest of the communities if the ones coming to the city have clout. If they're from the right family, if they're involved with the right organizations, if they have enough money, they may be granted a license, even if it's on a split vote, where it ought not to be. If an appeal were to be made to the Liquor Commission, all of the commissioners may agree what you say is correct. But we cannot turn down the granting of this license on the basis of there being too many. Throughout north Omaha, and although other senators have claimed to represent that area, they do not always support action in the best interest of the residents, so north Omaha becomes a term that is used to give the appearance of some kind of expertise or identification with the community, which is not true. Throughout north Omaha, there are far too many liquor establishments. I've expressed my opposition. There are people in the community with whom I may not ordinarily work or let's say they will not ordinarily work with me, such as preachers, who will also be appalled at the number of liquor establishments. In communities where there is impoverishment and the other difficulties that attend poverty, the liquor establishments sprout up like dandelions. So regardless of the existence of Whiteclay or any other specific

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location that people may have in mind, I'm looking at the ravagement of an entire community. So if there were no Whiteclay, I would still support this amendment. And it should be kept in mind that the Liquor Commission is in support of this. They are shown all kinds of circumstances when liquor establishments, those who want to sell liquor want to obtain a license. If the commission which regulates this activity can see the need for something such as this to protect communities, I think that is a very strong argument, a compelling one, for the adoption of this bill...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...that is being offered. Did you say time or 1 minute?

SENATOR CUDABACK: I said 1 minute, Senator.

SENATOR CHAMBERS: Thank you. I do care about the community of which I'm a part. I have no intentions of deserting it. I will stay there. I'm not looking to make points with anybody. So I can take a strong position in behalf of what's best for north Omaha. I don't have to cheese up to the city of Omaha. I don't have to be concerned about how any insurance company may feel about the positions I take because they want to continue to exploit that area. But this is really one of the worst. With all of these outlets, there are too many opportunities for teenagers to obtain liquor, for people to obtain liquor and make it available to teenagers. So the passage of this law will not harm or hurt any legitimate activity. But it will make it possible...

SENATOR CUDABACK: Time, Senator.

SENATOR CHAMBERS: ...to prevent what I've called the ravagement of various communities. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Senator Landis. Is Senator Landis on the...we are on the Kruse amendment, correct, AM2320. The question has been called on the Kruse amendment. Do I see five hands? I do see five hands. The

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question before the body is, shall debate cease on AM2320? All in favor vote aye; opposed, nay. Voting on ceasing debate on the Kruse amendment. Have you all voted who care to? Voting on ceasing debate on the Kruse amendment. Have you all voted? Record please, Mr. Clerk.

CLERK: 26 ayes, 1 nay to cease debate.

SENATOR CUDABACK: Debate does cease. Senator Kruse, you're recognized to close.

SENATOR KRUSE: Again to remind you that there is...I've heard no debate on this particular thing. I don't know of any opposition to it. It is to set up courses for servers and for managers. We may have an amendment on the next round to add a fee cost for the course but that will be later. I urge your support.

SENATOR CUDABACK: Thank you, Senator Kruse. You heard the closing. The question before the body is, shall AM2320 be adopted? All in favor, vote aye; opposed, nay. The question before the body is adoption of the Kruse amendment to LB 845. Record please, Mr. Clerk.

CLERK: 28 ayes, 1 nay, Mr. President, on the adoption of Senator Kruse's amendment.

SENATOR CUDABACK: The Kruse amendment has been adopted.

CLERK: Senator Cunningham would move to amend with AM2327.

SENATOR CUDABACK: Senator Cunningham, to open on AM2327. Is Senator Cunningham present? Yes, he is.

SENATOR CUNNINGHAM: Thank you, Senator Cudaback. I'd like to refile this amendment on Select File.

SENATOR CUDABACK: So ordered.

CLERK: I have nothing further on the bill, Mr. President.

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SENATOR CUDABACK: Thank you, Mr. Clerk. Discussion of advancement of the bill itself? Those wishing...there are a number of lights on. Senator Bourne. Senator Bourne waives closing. Senator Smith. Senator Smith, did you wish to address the advancement?

SENATOR SMITH: Yes, Mr. President. If Senator Landis would yield to some questions...

SENATOR CUDABACK: Senator Landis?

SENATOR SMITH: Senator Landis, I'm trying to just get a grasp here of the local entities versus the state entities and the realities that exist relating to that. So now you are saying that the Liquor Control Commission may grant a license, may deny a license, effectively, even if someone has met every other...every single condition that the competition has met.

SENATOR LANDIS: No, I'm not.

SENATOR SMITH: Okay, if you would respond to that, then.

SENATOR LANDIS: Right. There's a different situation. They're in different circumstances. One is earlier; one is later in time. One is facing an area in which there's a density and 1,200 or 1,600 police calls and the first one (inaudible). And in fact, as Senator Loudon said, there is...that it doesn't copy (sic) the renewals. They're not in the same circumstances. The river has moved on. And what's happened is, the existence of the first 15 or 107 licenses has created a different circumstance for the 108th, which means that, in that situation, when the locals decide that enough is enough, that the state commission then has the authority to say, yeah, that's right. And we can show it because, in fact, they're redistributing their law enforcement. So it's not the same thing.

SENATOR SMITH: Okay, thank you, Senator Landis. And I am just trying to get a grasp of what the real issues here include. And you know, I want there to be local control. I also want there to be equal treatment. And so I, to tell you the truth, I don't even know how I'm going to vote yet. But I can recall being on

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a city council and the local discretion was that a license ought not be granted. And we were slightly offended when the state commission would override our decision and they, you know, certainly had their own requirements and so forth. I've seen other situations where city ordinance, by way of zoning, can address some issues but, by way of zoning, has kept competition out. And I'm not speaking of the liquor business. I'm speaking of other businesses that the city effectively has to grant the new ability or the ability for someone to compete in the marketplace. And that makes me a bit uneasy because there are various political factors that exist and it oftentimes doesn't boil down to whether something...or where something should go, which is a zoning issue, but whether or not it should even exist. And really, I think we shouldn't go there. My concern is oftentimes that there are too many liquor licenses in certain areas. I fully agree with that. And I think Senator Landis certainly does touch on some of the realities that exist because of the time differential and the law enforcement concerns and the social impact of a concentrated number of liquor licenses. Thank you, Mr. President.

SENATOR CUDABACK: Senator Landis.

SENATOR LANDIS: Is this to close?

SENATOR CUDABACK: There are two lights on other than yours.

SENATOR LANDIS: Foot on the dock, foot in the boat, I understand the situation that Senator Smith finds himself in. I think in the end, if we got to pick, the local political subdivisions who are asking for this authority is a good one to choose. The Liquor Control Commission who's been battling in court with people who want expanded alcohol opportunities to try to make sure that we had disciplined control over them is the right one to choose. And the argument about equal treatment is an interesting argument. Here's my problem with the equal treatment argument. And I think it was Aristotle who said discretion comes...or arbitrary behavior occurs in two ways; it occurs in treating similar situations differently, and it occurs in treating the same...different situations by the same standard. In other words, it goes both ways, treating similar

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things differently and treating dissimilar things in the same way, and that's what we've got here. Equal treatment is not the same thing for the first 100 liquor licenses as it is with the next 100 circumstances. Those are not identical situations. It is in the very gravity of the existence of the density that the second 100 are different than the first 100. And saying, well, I want equal treatment for all doesn't mean you treat them alike. They're different. It's okay to treat them differently. At the point at which you have an aggregation that is sufficient to distort the deployment of law enforcement, you've got a sufficient public interest to say, you know what, take the license to the suburbs, take the license to someplace else; you can have a license, just go someplace else. We're not saying you can't have a license. We're saying you can't have a license here at this location, the dense location. That, I think, is the appropriate distribution of public interests here and it's why I support LB 845.

SENATOR CUDABACK: Thank you, Senator Landis. Senator Kruse, followed by Senator Chambers.

SENATOR KRUSE: Thank you, Mr. President and members. Commenting on the comments that have been made, this bill is a one-word bill--"shall" to "may." That's what you need to focus on. It's why I made it my priority bill because this will allow local option whereas presently we do not really have it. Let me give you two legal quotes. I think they're legal quotes because they come from courts and both of them are jaw droppers. The first is that present licenses have a constitutional right to renewal. Can you imagine that? That is what the court...many of the courts have said. The present licenses have a constitutional right to renewal. This is not about Whiteclay. Those businesses there have a constitutional right to renewal unless they get in trouble with the law. We've read about one of them in that kind of a case. The other three are just guaranteed by the constitution that they can renew their licenses. The second one focuses on this word "shall" and, again, density needs to be part of the consideration, but it's the "shall" that I'm looking at. Court of Appeals said that that word "shall" is so strong that the legislation in the statute does not have to be fully followed. Folks, hear that.

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The word "shall" is so strong that the legislative intent does not have to be followed, according to a Court of Appeals. We need to get rid of that word "shall" and change it to "may." Does that open it up? That simply gives the Liquor Control Commission some control to express some judgment. That's what they're there for. And it allows persons like our cities, like Grand Island, Omaha, others to express some judgment about the density but also about the character. At the present, the city council can say, this person is a bad actor; we've seen him operate in other parts of town and we don't want him to operate here. According to the present law, you jump through four hoops and they are generic hoops that don't mean much. There's one that involves a felony but doesn't say it. You jump through four hoops and the Liquor Control Commission shall grant you a new license. They have no option in the matter. That's what we have to deal with here. Give them an option in the matter. Give them a chance to listen to local input and to evaluate it and to make the decision with some of that added in. "Shall" to "may" is the key part of the bill that is before us. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Kruse. Senator Chambers.

SENATOR CHAMBERS: Mr. President, members of the Legislature, this is one of those issues on which empirical or concrete, specific, statistical data are available. Everybody on this floor knows the types of communities which are going to be overloaded with these liquor establishments. They are not going to be in west Omaha. They're not going to affect Warren Buffett or his ilk or those people who might be named king of Ak-Sar-Ben or the places where maybe high-paid CEOs will settle. But they're in communities such as the type that I represent, where the people are not esteemed highly anyway, where despite me giving the best political representation I can, as a community, we lack political clout. That is known. And whenever you go to a city, all you need to do if you want to find out where the glut of liquor establishments will be is to ask, where is, as these...one hillbilly song said, where is the "po" side of town? Everybody knows that. I hope Senator Smith was not attempting to suggest that the wealthier areas of a city are treated, when it comes to the granting of liquor licenses, the same way as the

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poor areas are. After doing everything to undermine the stability of these communities, to put strains on the families that are trying to survive and maintain some integrity, every type of activity which would undermine those efforts are placed in those locations. Then the ones who do the placing and profit financially are the very ones to point the finger and say, oh, it's not safe to go there. You find drunk people on the street and all the other things, many of which are stereotypical and untrue but are readily accepted as gospel. The liquor industry is the most highly regulated industry in this country, at least in this state, and it ought to be. Liquor is recognized as a drug. It's recognized as a drug whose use leads to more accidents, deaths, domestic violence, failures in individual lives, the dragging down of communities than any other drug, legal or illegal. I would like those people who are so "solicitudinous" toward the welfare, if you want to call it that, of the purveyors of alcohol to ask themselves why these people don't want to open an establishment in their own neighborhood. These establishments, by and large, are owned by people who don't live in the community where those establishments are and would not want the number that they are contributing to in these other vulnerable areas to spring up where they live. So all I can do is what is available for me in this Legislature to try to persuade my colleagues to do that which is decent, proper, and in order. Nobody can say alcohol is not readily enough available in any city in this state. But it is easy for people...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...who live in these communities and deal with the problems of excessive numbers of liquor outlets to point out that too much liquor is available and it is too readily available. The enactment of this law is not going to take away anybody's license. What it will do is give a regulatory commission the discretion to exercise judgment which any regulatory commission should have. And if you withhold from it the right to consider what can be shown as the greatest problem to date, then the commission may as well go out of business as far as I'm concerned. Because if my community is not helped, what do I care about these others? Let them become

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burdened with as many liquor establishments. Then they will join me in saying, we ought to make sure that every community enjoys protection. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Senator Landis, there are no further lights on. You're recognized to close.

SENATOR LANDIS: Thank you, Senator Cudaback. Senator Cunningham has asked for a chance to talk about language that would help clarify and explain, and we're meeting tomorrow at 9:00; the interested parties will do so. He has withdrawn his amendment. I'd ask for the advancement of the bill today. I'll continue to work with my colleagues to see if there is a final rapprochement available to us all. Otherwise, we'll just pick up this fight on Select File where we are now. Thank you.

SENATOR CUDABACK: Thank you, Senator Landis. You've heard the closing on LB 845. The question before the body is, shall LB 845 advance? All in favor vote aye; opposed, nay. Voting on advancement of LB 845 offered by Senator Landis. Have you all voted on the issue who care to? Record please, Mr. Clerk.

CLERK: 27 ayes, 0 nays, Mr. President, on the advancement of LB 845.

SENATOR CUDABACK: LB 845 does advance. Mr. Clerk, LB 745.

CLERK: LB 745, by Senator Synowiecki. (Read title.) Bill was introduced on January 19, referred to General Affairs, advanced to General File. I do have committee amendments, Mr. President. (AM0679, Legislative Journal page 731, First Session, 2005.)

SENATOR CUDABACK: Senator Synowiecki, to open on LB 745.

SENATOR SYNOWIECKI: Thank you, Senator Cudaback, members of the Legislature. First of all, I want to thank Senator Stuthman for his prioritization of LB 745. LB 745 is a bill to authorize the State Racing Commission to license and regulate wagering on historic races. LB 745 was advanced to General File with an amendment by the General Affairs Committee on March 3, 2005. There was no opposition to the legislation at the hearing.

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Nebraska and the sport of thoroughbred racing have realized a long, rich tradition of mutual benefit. Thoroughbred racing is indeed a good fit for Nebraska. Since 1934, thoroughbred racing has complemented our state's agriculturally based economy. And in recent years, however, thoroughbred racing, Nebraska racetracks, and thoroughbred breeders have struggled against various forms of expanded gambling, both within Nebraska and in surrounding states. LB 745 merely gives the thoroughbred racing industry a tool to be competitive. Like current simulcast thoroughbred racing, the bill will authorize racing that originates from an outside location and is transferred to the racetrack's current simulcast system. The outside system stores tens of thousands of digitized official races that have been run at regulated racetracks. Prior to placing a wager, the patron is provided past performance information. However, the names of the thoroughbred, the jockey, the race, and the racetrack are all concealed until the patron places his or her wager. So there is, members, it's not like the machines you might find over in Council Bluffs where it's purely luck and kind of like a slot machine. There is skill involved with these devices, these personalized simulcast devices. This is not expanded gambling. This is an advanced type of parimutuel wagering of regulated races simulcast to licensed racetracks. Thoroughbred and quarter horse racing is a part of Nebraska history, both economically and culturally. I believe it is imperative to give the State Racing Commission the authority to enhance Nebraska's thoroughbred racing competitiveness in the gaming market. I thank the members for your full consideration of LB 745 and, as indicated, there are committee amendments to the bill. Thank you, Senator Cudaback.

SENATOR CUDABACK: Thank you, Senator. There are committee amendments, as stated. Senator Janssen, you're recognized to open on the committee amendments, Chairman of...

SENATOR JANSSEN: Thank you. Thank you, Senator Cudaback. Committee amendment AM0679 was drafted because the committee felt it was necessary to ensure that some limits to the use of these machines. On page 2 of the bill, at the end of line 27, we added language saying that the parimutuel wagering on historic horse races, that the Racing Commission will be

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authorized to license and regulate, would have to cap the wager at \$10 per play. It would also require that the entire horse race be replayed at regular speed before any wagering can be placed on another horse race. Again, the committee adopted these provisions to ensure that wagering on these machines is done in the same manner and spirit as our current parimutuel and simulcasting horse race wagering. I would ask for your support of the committee amendments and the bill. Thank you.

SENATOR CUDABACK: Thank you, Senator Janssen. You've heard the opening on the committee amendments. Open for discussion. Senator Chambers.

SENATOR CHAMBERS: Mr. President, I am opposed to this bill and I'm going to fight it tooth and nail. First of all, I have never favored horse racing. I have offered proposals in the past to eliminate it. But I'm not going to support Senator McDonald's proposal anymore. Why in the world are we going to put more money into a compulsive gambler assistance fund, then produce additional compulsive gamblers? This operation is similar to a lottery, where you think you've got a better chance. The races have already been run. Somebody knows the winners. Whenever you have money running into the millions of dollars, as the pink slip indicates is envisioned happening with this bill, there will be corruption, there will be crookedness, and there will be fleecing of the suckers. In the committee amendment, I see the opportunity for at least six amendments which I'm going to offer. Then I'm going to go into the green copy and offer additional amendments. So people may not be so happy that Senator Stuthman prioritized this bill. But I'd like to ask him a question.

SENATOR CUDABACK: Senator Stuthman, would you yield?

SENATOR STUTHMAN: Yes, I would. It would be a honor.

SENATOR CHAMBERS: Senator Stuthman, what is the meaning of historic horse races?

SENATOR STUTHMAN: The meaning of historic horse racing...historic horse races are races that have already been

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run, probably in the forties, fifties, sixties, seventies, and eighties, that have already been run. There is a video of these races of which there are at least 50,000 of those races.

SENATOR CHAMBERS: How do we know that's what this term means? Your saying it doesn't mean it's so. How do we know what it means?

SENATOR STUTHMAN: Historic means something that's been in history. And history means a part of the racing industry that has been in the past. And that is the history of the racing industry and this, the history portion of it, would be the races that have been run.

SENATOR CHAMBERS: Where do you see all that in this green copy of the bill or in the committee amendment?

SENATOR STUTHMAN: I am just explaining to you what the question was of what is historic racing and the word "historic" is what I was trying to explain, Senator Chambers.

SENATOR CHAMBERS: But there is no definition of it in the green copy, is there?

SENATOR STUTHMAN: No, there isn't.

SENATOR CHAMBERS: I'd like to ask Senator Synowiecki a question, because he seems to be pacing so I'm sure he's got an answer. Thank you, Senator. Senator Synowiecki, where's the definition of historic horse races in the green copy or the committee amendment?

SENATOR SYNOWIECKI: Senator, the bill simply gives the Racing Commission the authority to regulate should they choose to have these machinea. But we've informed that the Racing Commission would very much like to help out the industry and give them a tool to compete with the additional gaming, both in and out of our state.

SENATOR CHAMBERS: But, Senator Synowiecki, I don't know what historic racing is. What...define for us or show us a

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definition. You're talking about machines. I don't see anything about machines in this definition. They could...couldn't they digitalize these, some prior races, if we're going to accept what Senator Stuthman says, that the word "history" means something that has already happened? Couldn't they digitalize races and generate them for computers and run those races in that fashion? Couldn't they do that under the language in this bill? And let me ask it a different way. Where is that prohibited in this green copy?

SENATOR SNOWIECKI: Where is it prohibited? Right now, the Racing Commission has the authority to regulate live races.

SENATOR CHAMBERS: No, here's what I mean. Where is there a prohibition in the green copy against what I described...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...if you allow historic horse races?

SENATOR SNOWIECKI: I'm sorry, Senator Chambers.

SENATOR CHAMBERS: That's okay.

SENATOR SNOWIECKI: What was the question?

SENATOR CHAMBERS: Where in the green copy is there a definition which would prohibit the type of presentation of these races that I'm describing; namely, that somebody might read an account of how a race occurred, digitalize by way of computer generation a race which they feel turned out a certain way? There's nothing in this that would prohibit that from being done, is there?

SENATOR SNOWIECKI: The green copy of the bill gives the Racing Commission the authority to regulate parimutuel wagering on historic races. Historic races that are bona fide races from another track is what the intent of this is going to be. This is...

SENATOR CHAMBERS: Where do you see that in the green copy,

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Senator? And pardon me from heading you off at the pass. Where do you see that in the green copy?

SENATOR SYNOWIECKI: It's not. It's not...

SENATOR CUDABACK: Time, Senator...

SENATOR SYNOWIECKI: ...explicitly in the...

SENATOR CUDABACK: Time, Senator Chambers.

SENATOR CHAMBERS: Thank you, Mr. President.

SENATOR CUDABACK: Senator Erdman, followed by Senator Stuthman.

SENATOR ERDMAN: Thank you, Mr. President, members of the Legislature. I wondered if Senator Stuthman would yield to some questions, please.

SENATOR CUDABACK: Senator Stuthman, would you yield to a question of Senator Erdman?

SENATOR STUTHMAN: Yes.

SENATOR ERDMAN: Senator Stuthman, we had a brief conversation this morning and the bill that's before us, which is your priority bill, would allow the commission to regulate historic races relating to horse racing. Is that the only currently regulated area of gambling law that would be allowed? And are there other areas where you can have previous games or situations bet on under current law?

SENATOR STUTHMAN: Under the current law, Senator Erdman, I am not aware of any commission that would regulate anything that has been or has occurred in prior years. And I know of nothing that would work on there.

SENATOR ERDMAN: So bingo games aren't. You can't replay those. You couldn't replay a keno game. They're all...all of the current gaming, gambling I call it--some of the progambling advocates here call it gaming--there is no current mechanism

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that allows any other form of gambling to be treated this way. Is that correct?

SENATOR STUTHMAN: Yes, that is correct. And in the conversation that we had before, I was trying to illustrate an example of the possibility of bingo. But since we have had that discussion, I've been thinking this over. And realistically, I don't think there is anything that would make it possible to immediately replay the game, replay the keno, replay the results, replay the betting or anything like that. And as far as bingo, that would also be in that same thing. With the horse racing, you know, it is...they run them right after that. They run the race and they rerun the race. According to the Racing Commission, if there's a discrepancy, they can run it immediately. So I think this is the only type of gambling, in my opinion, where there is an actual recording and can be rerun.

SENATOR ERDMAN: Thank you, Senator Stuthman. I appreciate your insight. As a member of the General Affairs Committee who heard this bill, and I tend to agree that it probably isn't expanded gambling in the sense that we don't currently have this gambling in the state. So I think that is...I think Senator Synowiecki is accurate and Senator Stuthman is accurate. The question that I have is whether this is even a good idea. And I'm interested to hear the proponents, both Senator Synowiecki and Senator Stuthman visit, because we had a lengthy discussion in the General Affairs Committee about this idea. The committee amendment that's before you places limitations on the regulatory authority of the commission. Right now, they would be able to regulate it as they see fit. Under the committee amendment, they would be required to limit the total wagers to no higher than \$10 per play and that the full horse race be replayed at regular speed before wagering may be placed on another horse race. I think Senator Stuthman's answer to my previous question is something that I hadn't actually thought of either. And maybe Senator Stuthman would yield to this. Senator Stuthman, is there anything that is in...I think this is an Arkansas example that is one of the states that does this. Is there anything that prohibits the individual wagering, who I understand sits at a machine, from replaying the previous race and to wager on that again? Because as I understand this, this

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is at the...the horse race can only be played at regular speed. Is the system you envision something where the player themselves has control over the machine, or is it something where they sit down and put money into the machine or place...wager as they would in a parimutuel or a simulcast race?

SENATOR CUDABACK: Senator Stuthman.

SENATOR STUTHMAN: When an individual...

SENATOR CUDABACK: One minute.

SENATOR STUTHMAN: ...puts the...when an individual puts the race up, Senator Erdman, and he places his bet, then the race is run. In my knowledge and my ability, there is no way that there can be a rerun of that race with wagering on that race. The only way would be if...when you punch it and it is computer selected of 50,000 races what the next race would be. Then the bet would be placed after you see the horses, the jockeys, the form, and the bet would be placed. And then the race would be run. But there would be no rerun of that individual one unless you were fortunate that that computer selected that same one of the 50,000 to rerun, which is very unlikely.

SENATOR CUDABACK: Time, Senator.

SENATOR ERDMAN: Thank you, Senator Stuthman.

SENATOR CUDABACK: Senator Stuthman, you may continue.

SENATOR STUTHMAN: Is this...

SENATOR CUDABACK: Mr. Clerk. Mr. Clerk, a motion on the desk?

ASSISTANT CLERK: Mr. President, I have a priority motion. Senator Chambers would move to bracket until April 11, 2006.

SENATOR CUDABACK: Senator Chambers, you're recognized to open.

SENATOR CHAMBERS: Thank you. Mr. President, I'm going to show how I've fought against horse racing in the past by jumping on

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this nag right away and try to send it to the glue factory. I've heard all this talk by Senator Synowiecki and Senator Stuthman of what is entailed here, but nothing in the language of the statute. I'd like to ask Senator Synowiecki a question or two.

SENATOR CUDABACK: Senator Synowiecki, would you respond?

SENATOR SYNOWIECKI: Yes, of course.

SENATOR CHAMBERS: Senator "Snooky," are you the one who will answer questions on the committee amendment, or should I ask those of Senator Janssen?

SENATOR SYNOWIECKI: I'd be happy to attempt to answer the questions from the committee amendment.

SENATOR CHAMBERS: Okay, do you have a copy of the committee amendment?

SENATOR SYNOWIECKI: No, I don't have a copy in front of me right...thank you. Yeah, now I do.

SENATOR CHAMBERS: That reminded me of a poem called The Ballad of the (sic) East and West, by Rudyard Kipling. There was one point where it said: And as he drew to the Quarter-Guard, full fifty (sic) swords drew clear -- / There was a not a man but carried his feud with the blood of the mountaineer. I won't go through the whole thing. But when Senator Synowiecki said he didn't have a copy of that amendment, full 20 or 30 were presented to him immediately. So my having said those words will have given him a chance to look at it because there are only a total of four lines. Senator "Snooky,"...

SENATOR SYNOWIECKI: (Laugh)

SENATOR CHAMBERS: ...in line 2, what does "play" mean where it says \$10 per play? What does "play" mean?

SENATOR SYNOWIECKI: It means when you engage the machine, when you place your bet...

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SENATOR CHAMBERS: What machine?

SENATOR SYNOWIECKI: The personalized simulcast machines.

SENATOR CHAMBERS: Maybe I need to ask Senator Janssen, because this is his amendment and I don't want you to have to account for somebody else's work. Senator Janssen, you're the Chairperson of the committee that fabricated this amendment? Could somebody give Senator Janssen some volume?

SENATOR CUDABACK: Senator Janssen?

SENATOR JANSSEN: Yes, we are.

SENATOR CHAMBERS: Senator Janssen, in line 2, where it says \$10 per play, what does "per play" mean?

SENATOR JANSSEN: That means for one race.

SENATOR CHAMBERS: And where is this race run?

SENATOR JANSSEN: No one knows.

SENATOR CHAMBERS: So then how do you play it?

SENATOR JANSSEN: You put your \$10 in, if that is the wager that you can wager, all right, and that activates...

SENATOR CHAMBERS: You put your \$10 where?

SENATOR JANSSEN: In this...it looks like a simulcasting machine. There's a little slot in there...

SENATOR CHAMBERS: So where do you see...

SENATOR JANSSEN: ...where you slide your \$10 in.

SENATOR CHAMBERS: And pardon me for cutting in, but...I don't want to be rude, but my time is running.

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SENATOR JANSSEN: Okay.

SENATOR CHAMBERS: I don't see anything about a machine in here that receives money, which is activated by the money and a race is run. Where do I see anything about machine here?

SENATOR JANSSEN: That would be in rules and regs set up by the Racing Commission, Senator Chambers.

SENATOR CHAMBERS: How do I know that?

SENATOR JANSSEN: Well, it would have to be.

SENATOR CHAMBERS: Why would it have to...

SENATOR JANSSEN: That's why we have a Racing Commission.

SENATOR CHAMBERS: Well, there's nothing here that says this is limited to a machine, is there? They can set up a rule and reg and do it any way they want to, in reality, can't they?

SENATOR JANSSEN: Yeah, but that has to...

SENATOR CHAMBERS: Can't they? Couldn't they, Senator Janssen, based on the language of this amendment and the green copy?

SENATOR JANSSEN: Based on this language, yes...

SENATOR CHAMBERS: Okay, now...

SENATOR JANSSEN: ...that it could only be \$10 a play and it would be run at the speed of a race.

SENATOR CHAMBERS: Please, Mr. Witness, would you be responsive to the question, please? Thank you very much. Under this language, could they have a large screen and project the race to be run on that screen? And in order to participate, people would have to come and put their money down in order to bet on the race being run on that screen? Is that true, Senator Janssen?

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SENATOR CUDABACK: Senator Janssen.

SENATOR CHAMBERS: Is that true, Senator Janssen?

SENATOR JANSSEN: I didn't hear what your question was, Senator Chambers.

SENATOR CHAMBERS: Do I need to speak louder?

SENATOR JANSSEN: No, I was...

SENATOR CHAMBERS: Well, why didn't you hear what I said?

SENATOR JANSSEN: Because I was carrying on another conversation on the floor with legal counsel to the committee.

SENATOR CHAMBERS: I thought, though, when a senator is talking to another senator, the questioner is entitled to have the "questionee" pay attention in order to answer the question. Is that your understanding of how we do things around here?

SENATOR JANSSEN: Yes, but at that time, you asked Senator Synowiecki, who was the "questionee," the question.

SENATOR CHAMBERS: Senator, let me start again.

SENATOR JANSSEN: That would be fine.

SENATOR CHAMBERS: Senator Janssen, based on the language in the committee amendment and in the green copy, there could be a large screen on which a race is projected and the way a person would be allowed to participate is to lay the money down, giving his or her bet, and then the race could be shown on that screen. That could be done under the language of this amendment, couldn't it?

SENATOR JANSSEN: I would imagine it could, although I doubt very much whether that would be what happens because they would...

SENATOR CHAMBERS: Senator Janssen, I'm talking about the

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amendment your committee drafted and the law that would be on the books if we adopt it. There is nothing in this language that would prevent what I described from happening, is there?

SENATOR JANSSEN: Theoretically, no; that could happen.

SENATOR CHAMBERS: Not theoretically, actually. There's nothing to prevent that.

SENATOR JANSSEN: Actually, I don't think that would happen.

SENATOR CHAMBERS: Now there is nothing that defines what a historic horse race is, is there, in this legislation?

SENATOR JANSSEN: No, but a historic horse race would be a...

SENATOR CHAMBERS: No, I'm asking you these questions.

SENATOR JANSSEN: No.

SENATOR CHAMBERS: There's no definition?

SENATOR JANSSEN: No.

SENATOR CHAMBERS: A historic horse race could be what anybody decided that it was. Is there anything that says this so-called historic horse race has to be an actual race that was actually run?

SENATOR JANSSEN: No, not in the committee amendment.

SENATOR CHAMBERS: So it could be a race that was computer generated and labelled historic horse races, couldn't it?

SENATOR JANSSEN: Quite possibly.

SENATOR CHAMBERS: When you talk about the race being replayed, that means you're going to have some kind of device that projects a moving image on some surface which can be observed by a person, is that correct?

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SENATOR JANSSEN: That's correct.

SENATOR CHAMBERS: And there's nothing in here that tells us what that surface is, is there?

SENATOR JANSSEN: Not at the present time, no.

SENATOR CHAMBERS: And there is nothing which tells us how those images will be projected on that surface, isn't that true?

SENATOR JANSSEN: The only way you could look at it would be the underlying area in the amendment that says it will be authorized, licensed, and regulated parimutuel wagering on historic horse races. That's all it says.

SENATOR CHAMBERS: Your Honor, I move that that last answer be stricken as being unresponsive to the question. Senator Janssen, there is nothing that tells what means will be used to project that image on whatever surface this moving image will be shown, is there?

SENATOR JANSSEN: No, no.

SENATOR CHAMBERS: When we use the term, in line 3 of the committee amendment, "replayed," there's...we don't know what that means, do we, based on this language?

SENATOR JANSSEN: It would be...no, replayed is something that has actually happened before and you replay it.

SENATOR CHAMBERS: I would like a question answered and I want you to listen carefully. I use the word "images." Where is there anything in the committee amendment or the green copy which talks about moving images? The race could be played and replayed on the basis of an oral description of one of these races. Is that true?

SENATOR JANSSEN: That's correct.

SENATOR CHAMBERS: So we have something more than what a person might think we're talking about once we begin to analyze this

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language. Would you agree?

SENATOR JANSSEN: I would agree.

SENATOR CHAMBERS: When you say, in the committee amendment, wagers no higher than \$10, are you talking about distance from the ground or the amount of the wager?

SENATOR JANSSEN: The amount of the wager.

SENATOR CHAMBERS: Could we say, wagers no greater than \$10 rather than higher than \$10? Might that be a better way to say it? Might it?

SENATOR JANSSEN: That would...that would be fine.

SENATOR CHAMBERS: Okay. Now since you're talking about the maximum, there is nothing which would prevent the wager from being a lesser amount, is there?

SENATOR CUDABACK: One minute.

SENATOR JANSSEN: I would imagine that if you had a machine that would accept a lesser amount...

SENATOR CHAMBERS: No, no...based on the language...

SENATOR JANSSEN: It does not say anything about being a lesser amount, no, a \$10 wager.

SENATOR CHAMBERS: There could be. So when you said \$10, you're making a presumption, aren't you, that's not justified by the language in the amendment of your committee, right?

SENATOR JANSSEN: It does say \$10 per play.

SENATOR CHAMBERS: It says no...but it says no higher than, so it can be a lesser amount, right?

SENATOR JANSSEN: That it could be.

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SENATOR CHAMBERS: So somebody told you it's going to be \$10, is that correct?

SENATOR JANSSEN: I'm sorry?

SENATOR CHAMBERS: Somebody told you that the amount is going to be \$10 per play, is that correct?

SENATOR JANSSEN: Yes.

SENATOR CHAMBERS: Who told you that?

SENATOR JANSSEN: That is the limit that we put on in the committee, would be \$10. Otherwise, it could have been any amount the way...

SENATOR CHAMBERS: Why did you put a \$10 limit and not a \$5 limit?

SENATOR JANSSEN: We felt \$10 was adequate.

SENATOR CUDABACK: Time, Senator.

SENATOR CHAMBERS: It doesn't cost \$10 to run one of these races, however you do it, whether orally or visually, does it?

SENATOR CUDABACK: Time, Senator Chambers.

SENATOR JANSSEN: I don't know what the cost would be on the machine.

SENATOR CHAMBERS: Thank you, Mr. President.

SENATOR CUDABACK: You've heard the opening by Senator Chambers on the bracket motion till April 11, '06. Open for discussion. Senator Stuthman, followed by Senator Loudon and others.

SENATOR STUTHMAN: Thank you, Mr. President and members of the Legislature. I want to discuss a little bit of the rationale and the thinking, in my opinion, of the amendment that we're discussing right at the present time. The discussion was no

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greater than \$10 or no higher than \$10. I think the realistic thing about that was that if this bill was enacted, they wanted to put it at a minimal dollar amount so that it wasn't a large amount. Horse racing, simulcasting, the two other components of horse racing, you can bet any amount you want to. You could put \$100 to show, win, place, or show. You can go the other trifecta is the doubles, the late double, all of those instances for betting. I think they wanted to keep this to a smaller amount and this no greater than \$10, I can live with that, or no higher than \$10, I can live with that also. But in order to enact...engage the machine, you need to place your bet, your dollars. And this would be \$1, \$2, \$5, or whatever you want to put in. But no greater or no higher than \$10. I'll agree with that. I think that's right, I think that's very good. I think also I would agree with the portion of it that, in the initial year of it, or years of it, I think they should run the whole race. That way they can get a feel of how the machines run. I think the way it is right now on the machines that are going in other states, you can run the whole race, which is usually two minutes or less. You can run the last 20 seconds of the race. You can start the race after your bet is engaged and you can see the beginning of the race and then you can push the button and fast forward to the last 20 seconds of the race, and then you see the final of the race and then get your return for that race. I think that's very important. I totally support the committee's amendment to it, I think, on the initial, in the first year or several years, and after that we may come back to try to change something. But I think it's very good to get the people that attend these races, these racetracks, which will benefit from it, that they can get accustomed to that. Originally, the horse races...and I think they started long, long time ago in the thirties, forties, horse racing. That was a form of entertainment. Then as time lapsed from the actual race at a racetrack where everybody had to come to the race, they developed technology with simulcasting. They simulcasted races from other racetracks. People didn't have to travel to other racetracks to do their wagering or have their entertainment. We have a racetrack in Columbus. It's been very successful. But the only reason that it's been successful is because of the enactment of simulcasting, the live meet does not generate near enough money. But with the simulcasting in place

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throughout the year, then it does become a little bit profitable. But I think we really got to look at also the fact that it isn't just what is wagered at the track, the dollars that are wagered at the track, the money that is made at the track. The people that do...

SENATOR CUDABACK: One minute.

SENATOR STUTHMAN: ...and come to the racetrack, to the live meet, the live meet brings a lot of people into town. The economic impact on the community, you know, hundreds of people come and work at the track. The horses, we will house from 800 to 1,000 horses during our live meet. That's a lot of horses, that's a lot of oats. That's a lot of work for some people. I think it has an impact on the community and I appreciate that. But I think, since we have other expanded gambling, I think this is just something that we could assist these racetracks in trying to attract people to come to the track. It's a form of entertainment. Yes, it is gambling, it is wagering. But one thing about it is that parimutuel racing, and with this...

SENATOR CUDABACK: Time, Senator Stuthman.

SENATOR STUTHMAN: Thank you.

SENATOR CUDABACK: Thank you. On with discussion, the bracket motion. Senator Louden, followed by Senator Synowiecki.

SENATOR LOUDEN: Thank you, Mr. President and members. I'd like to ask Senator Synowiecki a question if he would yield, please.

SENATOR CUDABACK: Senator Synowiecki, would you yield to a question?

SENATOR SYNOWIECKI: Yes.

SENATOR LOUDEN: Yeah, Senator, since this is something I've never heard that much about, I'd like to have some clarification on this. Now this, I presume when it's parimutuel then you bring a crowd of people into an area and have a big screen up there for them to watch and then this race is run on this

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screen. Is that what it is? Or is it individual little computer screens that everybody watches?

SENATOR SYNOWIECKI: It's the latter. Actually, it's called an instant racing terminal. Right now, if you...I'll take you down to Horsemen's Park in Omaha, Senator Louden. They have these individualized simulcast machines that I can go up there, put money in, and bet the horses, and they're live.

SENATOR LOUDEN: But the same horse race...

SENATOR SYNOWIECKI: What this technology is, you can do it on historic races.

SENATOR LOUDEN: Yeah, but the same horse race is being run on all of the little machines at the same time?

SENATOR SYNOWIECKI: No, it would be individual races,...

SENATOR LOUDEN: (Inaudible)

SENATOR SYNOWIECKI: ...but it fits...it fits the parameters of parimutuel wagering.

SENATOR LOUDEN: Now by historic horse races then, are these actually horse races that have been run or are they just something that's computer generated to make a horse race on there?

SENATOR SYNOWIECKI: No, these are actual races that have run at a licensed racetrack. Like Senator Stuthman indicated, they've got thousands upon thousands of...this is technology catching up with the horse racing industry.

SENATOR LOUDEN: Well, I agree. Now my next question is, could this be car races or any other kind of races, boat races?

SENATOR SYNOWIECKI: No, absolutely not, Senator Louden. It's parimutuel....

SENATOR LOUDEN: I know.

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SENATOR SYNOWIECKI: ...if you look, it's parimutuel wagering.

SENATOR LOUDEN: But I mean the technology is there to use something else besides horse racing.

SENATOR SYNOWIECKI: And I'm confident that the Racing Commission, in their authority to regulate this activity, won't allow it.

SENATOR LOUDEN: That's what I'm getting to is, is this actually some kind of horae racing or is this just another form of video gambling of some type only you're using horae races from some place in order to make it work?

SENATOR SYNOWIECKI: Absolutely not. It's parimutuel wagering. It's being done in other states that have horse racing, live horse racing. And it is...there is skill involved, too, because you look at past performances and so forth.

SENATOR LOUDEN: Yeah, now those horse races you see, like, when you go down here at the the fairgrounds or wherever. Those are actually horse races being run at that time, aren't they, some place? Are those...

SENATOR SYNOWIECKI: Yes, yes. In 1987, I believe it was through a constitutional amendment, the voters approved simulcast wagering in the state of Nebraska. And that's...this is a updated version, if you will, of simulcast racing and it's on historic races and it's at the disposal of the player more so than the live simulcast racing.

SENATOR LOUDEN: I guess my major concern is, is how can anybody explain to me that this is different than video gambling? Because you're using a historic horse race someplace that's printed in there, and if each individual little machine has a different race on it, it wouldn't be any different than if you go into one of these gambling states and you start putting your money in one of those video poker slots or something like that. Is there really actually any difference? Same technology and everything.

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SENATOR SYNOWIECKI: Oh, absolutely not. There's two areas I would delineate from. There are, number one, they're total games of chance. There's absolutely no handicapping involved. And with these, you get (inaudible)...

SENATOR LOUDEN: (Inaudible)...horse racing that you don't know anything about isn't a game of chance?

SENATOR SYNOWIECKI: Well, do you know how to read a racing form?

SENATOR LOUDEN: Well, yeah, if you can remember the history on it, you can play it out ahead of time.

SENATOR SYNOWIECKI: And then second, the second delineation would be this is parimutuel wagering. And these machines are not self-contained. When you say video poker or a slot machine, that is entirely self-contained.

SENATOR CUDABACK: One minute.

SENATOR SYNOWIECKI: This is hooked up and the host computer for the system is in Maryland, I believe, and it's truly parimutuel wagering on horse racing.

SENATOR LOUDEN: I guess my last question is, before my time runs out, do people actually gamble on this stuff?

SENATOR SYNOWIECKI: The state of Arkansas has realized substantial increases in the purse monies for their live thoroughbred...so this is horse racing industry attempting to enhance horse race industry. And this is not a Las Vegas company coming in and putting slot machines at a track.

SENATOR LOUDEN: Well, I agree. I mean, I like a good horse race, but I like to see a horse race. I don't like to, you know, watch a television.

SENATOR SYNOWIECKI: Under the committee amendment, you have to watch the entire race. So if me and you, a year from now, want

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to go down to Horsemen's Park and you want to play these devices, you'll have to watch the entire race.

SENATOR LOUDEN: Okay, well, thanks, Senator Synowiecki. I would rather watch a horse race, I guess. Thank you.

SENATOR CUDABACK: Thank you, Senator Louden. Senator Synowiecki, you may continue, motion to bracket.

SENATOR SYNOWIECKI: Thank you, Senator Cudaback. As I indicated, this is a new technology available within the thoroughbred industry. It is an attempt to provide for an enhancement to bring the fans back to the track. It is, as Senator Stuthman indicated also, there's collateral positive impacts economically, relative to our racing industry. There's an agricultural component relative to breeders. Our Nebraska-bred thoroughbred program has been diminished. Breeders are not dropping foals in the state of Nebraska now because of the diminished purses at our tracks. And this is essentially a tool for them to use that other states have adopted, namely Arkansas, to help solidify and regain a position in the market for...in the gaming market, which Nebraska is actively participating in, to regain a share within that gaming market and to attract the new generation of fans. These are what they call instant racing terminals. And it's almost difficult to "differentiate" what we have now, as I was...during my discussion with Senator Louden. I can go to Horsemen's Park this afternoon, bet on races at an individual machine, and put the money in the machine and bet these horse races. The difference is, these will be based upon historic races rather than horse races that are fed live from another track. The basic premise of these instant racing terminals is that it allows the player to bet on a previously run thoroughbred race. It is, in all aspects, identical to live or simulcast racing with the exception that the identities of the race, the horse, the trainer, and the jockey are concealed, but all that information in terms of past performances is available. The player activates the machine. The instant racing terminal is a stand-alone machine, but it is tied in, via computer, to a central tote system and there's where you have your parimutuel wagering aspect of this. The machine has a set of buttons,

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touchscreens, which allows the player to access information similar to that which is in the racing form, you know, about each horse in the race. While the identities are not revealed, the player does have access to information regarding past performances, has information regarding the trainer, has information regarding the jockey and track conditions, although the actual names, again, are not revealed to you. Currently, the centralized system is used by tracks with these IRTs. They have a library of about 50,000 previously run races which are periodically rotated to ensure that a player cannot go through the entire catalog of races and become familiar with particular outcomes. And Senator Stuthman referred to this previously. There's, like, 50,000 races in these things. Under the current system, a player selects three horses in the order of finish and payoffs are graduated. For example, all three in order, all three in any order, or top two finishers, exactas, perfectas--very similar to the type of wagering that you can conduct today at our racetracks here in our state. The system is parimutuel in nature. The player is betting against other players, not against the house or a machine. Unlike a slot machine, the machine is no component in determining the winner. The determination is made by the off-site central tote system. The house doesn't care who wins. It just gets the cut, again, similar to our live racing. It makes no difference if a long shot wins a race or the odds-on favorite relative to the house or the racetrack. There's absolutely no difference in that in terms of what the take is. After the race is over, just like at our tracks today, the payoffs are shown on the screen and the machine issues winning tickets. So in many ways, this system that Senator Stuthman and I are trying to have access in terms of regulation by our Racing Commission is a way...

SENATOR CUDABACK: One minute.

SENATOR SYNOWIECKI: ...by which we can, again, instigate a reclaim by our horse racing industry in our gaming market, both here in our state where we're competing with local lotteries, keno, pickle cards, the whole gamut of gaming. And in particular, there's no secret that the onslaught of casino gaming in surrounding states have also served to diminish the position of our thoroughbred industry in the gaming market. So

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that's the intent, is to bring back this agriculturally based product and to bring back...

SENATOR CUDABACK: Time, Senator Synowiecki.

SENATOR SYNOWIECKI: ...a rejuvenation of fans to our Nebraska-bred racetracks. Thank you, Senator Cudaback.

SENATOR CUDABACK: Thank you, Senator Synowiecki. On with discussion, bracket. Senator Jensen. Jensen.

SENATOR JENSEN: Thank you, Mr. President, members of the Legislature. You know, this is the age-old story of gambling and gambling devices in that you've got to have one-upsmanship constantly, and this is a way for, certainly, racetracks to come back and get a little higher notch above the lottery, to get a little higher notch above the pickle cards or scratch cards or whatever they are. And this will always be ongoing. Any time we give something to one, then the next year somebody will be back in and say, we got to have more because they're taking part of our dollars. I believe this is all part of the instant racing which was started by RaceTech. Is that correct, Senator Synowiecki?

SENATOR CUDABACK: Senator Synowiecki, would you respond?

SENATOR JENSEN: Or simulcasting.

SENATOR SYNOWIECKI: Yeah, is that the company out of Arkansas? I don't know exactly what their...

SENATOR JENSEN: I believe so. Out of Oaklawn?

SENATOR SYNOWIECKI: Yes, Senator Jensen, I got it right here. RaceTech.

SENATOR JENSEN: All right, thank you. Well, and I'm just...and they pulled something off the Net and it's a little old, we can get something a little sooner. RaceTech, the company behind instant racing, expects to top the \$100 million mark in the total handle sometime this year. Instant racing, basically,

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parimutuel video lottery terminals went on-line early in 2000 in Oaklawn. Handle in 2004 is up 50 percent over the last year and July will be the first \$6 million month. And we pulled up some other ones. RaceTech at Oaklawn and they've been testing that. And actually, theirs, they started out with 25 cents to a dollar per play. We're going to start out at \$10 and then, yes, we'll go up then. If fans double their wages, they can qualify for a special jackpot which can reach \$5,000. Now instant racing has been approved at Oregon tracks and so this is something...and it's also, I understand, in Wyoming. But it's all a way and a method to separate people from their money that they have. And I don't know, yesterday we were supporting an education bill and we have distance learning and we've done all that. And yet, we've got to be doing something wrong when, in mathematic classes, that people think that they can make money through gambling. It just doesn't work. This is an expansion of gambling. Last year, we had it on the ballot for casinos. It was voted down by the public. I think it's time to step back and say, whoa, let's wait a while, without approving more gambling in more ways in this state. Yes, I think Senator McDonald, through her bill, we were able to catch up a little bit and start to treat individuals. But to think that you can run a race every 2 minutes, and that you can bet \$10 on that race every 2 minutes; 2 goes into 60 minutes about 30, so 30 times \$10, in my book, is somewhere around \$300 bucks an hour you can lose if you play every race. I don't think we need to go here. I think what we have is enough. And I'd like to give the rest of my time to Senator Don Pederson, Mr. President.

SENATOR CUDABACK: Senator Don Pederson, 1 minute.

SENATOR D. PEDERSON: Thank you, Mr. President. This hasn't got a whole lot to do with horse racing but, you know, oftentimes we stand here in the Legislature and we say, I wonder what it's like outside. Well, we have the unique ability here to hear the dripping coming through the window, see the little blinds up there, soaking wet. And if anybody wonders why we have decided to speed up the renovation of the repairs of this building, I hope they just listen under the south balcony as to what it's really like in here. So I just thought I'd call your attention to the fact that some of the things that we do are for the good

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of the state. Thank you.

SENATOR CUDABACK: Thank you, Senator Pederson. Senator Chambers, on your motion to bracket.

SENATOR CHAMBERS: Mr. President, members of the Legislature, you heard Senator Synowiecki scrambling to try to evade what Senator Louden was asking him. There is no handicapping, no skill involved in this when it's projected from someplace in Maryland or anyplace else around Washington, D.C., where people like Abramoff and these other corrupt politicians are found. And with the millions of dollars involved, you can't tell me there are not going to be some fixes in this kind of activity. The only way you can handicap this race, as Senator Louden pointed out, is if you know which race it was, and in that case you know the outcome. I bet...I'm going to ask Senator Synowiecki a question.

SENATOR CUDABACK: Senator Synowiecki, would you respond?

SENATOR SYNOWIECKI: Yes.

SENATOR CHAMBERS: Senator Synowiecki, where does the term "parimutuel" come from, if you know?

SENATOR SYNOWIECKI: Where does the term come from?

SENATOR CHAMBERS: Yes, parimutuel.

SENATOR SYNOWIECKI: I don't know where it comes from.

SENATOR CHAMBERS: Thank you.

SENATOR SYNOWIECKI: My layman's...okay.

SENATOR CHAMBERS: Because I'm going to ask Senator Stuthman. He looks like he can't wait. Thank you. Senator Stuthman, where does the term "parimutuel" come from?

SENATOR STUTHMAN: The term "parimutuel" comes from the method of betting and the way the bet is paid out.

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SENATOR CHAMBERS: Thank you. You described what it is but not where it came...it came from France. It was Paris mutual betting, a way to rook the suckers. You have these races, a certain number of horses in each race, and people who are going to bet put all of their money in the pot. Then the track takes its share off the top and then the suckers scramble for what's left. That's where parimutuel come from...came from. But at any rate, there is no skill involved. But if there were, you'd have to know something about the horses running. And Senator Synowiecki and Senator Stuthman continue to try to assure us that nobody is going to know which races are being projected. If they are actual depictions of races that were run, how far back in time do they go? They would have to be races that were caught in their entirety from beginning to end. There is nothing in this language which prevents computer generated races from being run. And nobody will know whether that's the case or not. As I said, I think games are being run on us with this kind of thing. So whereas I had supported that amendment that would give money to the gamblers with problems, I'm not going to support that anymore. That amendment, it has come to my attention, is for the purpose of providing money for those people who provide these services. There's not money available for them to keep their operations running and that is what the undergirding is for that particular amendment. That's where the money would go. So I'm going to really look with a jaundiced eye if and when that amendment comes before us again. But I'd like to ask Senator Synowiecki a question.

SENATOR CUDABACK: Senator Synowiecki, would you...

SENATOR CHAMBERS: Senator Synowiecki, in the committee amendment in line 3, where it says replayed at regular speed, what does regular mean?

SENATOR SYNOWIECKI: I believe the committee wanted to assure that an individual had to watch the entire race at normal speed, meaning you couldn't fast forward...

SENATOR CHAMBERS: At what speed?

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SENATOR SYNOWIECKI: At regular speed.

SENATOR CHAMBERS: What does regular mean?

SENATOR SYNOWIECKI: It means at...

SENATOR CUDABACK: One minute.

SENATOR SYNOWIECKI: ...the pace of which the actual race was run. So it can't be fast forwarded.

SENATOR CHAMBERS: Ahs! Why didn't they put that in the amendment? Because I have an amendment that says virtually what you just said.

SENATOR SYNOWIECKI: Because I don't find it necessary. I think a layman could interpret "to be watched at regular speed" as that would be the interpretation. We're giving the Racing Commission the discretion...

SENATOR CHAMBERS: Well, we don't want the laymen to have to...

SENATOR SYNOWIECKI: ...to develop rules and regulations pursuant to legislation.

SENATOR CHAMBERS: We don't want the laymen to have to interpret when we can give more precise language right here, as you did. That's our responsibility as legislators. The committee amendment, as I said, offers me a fertile field and I'm going to plow it. And I'm going to take as much time as is necessary. This that Senator Synowiecki is giving us is an expansion of gambling, one of the most addictive kinds that you can have. As Senator Jensen pointed out, the allure is there of all this money you can win. So if you lose...

SENATOR CUDABACK: Time, Senator.

SENATOR CHAMBERS: ...and gamble and lose again, you can continue and maybe you'll get it back before the day is over. And by the time you get through, you don't have a...

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SENATOR CUDABACK: Time.

SENATOR CHAMBERS: ...house to live in. Oh, thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Mr. Clerk, items for record, or announcements?

CLERK: Mr. President, bills read on Final Reading were presented to the Governor, 11:45. (Re: LB 454, LB 454A.) Enrollment and Review reports, LB 1199, LB 1199A, LB 1226, LB 1226A, LB 1227, LB 940, all to Select File. Notice of hearing from Government Committee. New A bill. (Read LB 845A by title for the first time.) Senator Mines would like to print an amendment to LB 1222; Senator Baker to LB 1189. Thank you, Mr. President. (Legislative Journal pages 1348-1356.)

SENATOR CUDABACK: Thank you, Mr. Clerk. Further discussion, motion to bracket? Senator Erdman.

SENATOR ERDMAN: Thank you, Mr. President. Members of the Legislature, I have enjoyed the discussion. I won't disagree with the proponents of the bill that the horse racing industry has helped the ag industry. And I would say that that has probably helped it more in the past than it would help it under this bill. Under the idea that these machines could only be located at an existing horse track, it would possibly bring more individuals out to the actual racetrack then potentially help them with their on-site betting, which is an annual requirement, the one day a year that they have to have before they are allowed to do simulcasting as well. The ideas that some of us have visited about with that might actually help the ag industry even more would be, on those days when they were actually betting on these historic races, if they would actually bring some of those horses in out of the cold and stand them next to the machine and feed them some hay. That would probably help the ag industry there, at least, that horse in particular. But I think we have to think through this in sincerity and whether or not this is even a good idea. The state's cut, as far as the agency that would benefit from this, is about \$30,000 a year and I'm not going to tell you that they don't need the money.

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They're a cash-funded agency. I can understand that. But I think some of the legitimate concerns that Senator Chambers has brought up and Senator Jensen about the expansion and what that potentially does to the individuals who are betting is a problem. We have testimony from Arkansas or Alabama, one of the states where this is located, where there's a substantial amount of individuals that are betting on this. And to the extent that it's not an expansion of gambling that is new gambling, it would be an expansion of current gambling which has the same goal in mind. One of the things that is questioned is, is that we have the old horse races. Senator Loudon points out that you wouldn't know the handicap, if you will, on a race like you would on a simulcast or on a live race. But it is interesting, this whole idea, and the idea is to try to extract more money from the same people that are going to attend these events. An argument might be made that, in addition to helping the ag industry, it would probably help the glue companies that are making glue. And they could put on the back of their glue bottles the pictures of the horses that would be running in some of these simulcast races and they could use that as a marketing tool to cross market. I mean, it's really unlimited as far as how creative individuals can be. The question is whether this is even a good idea. I don't believe it is and I wish that one of my colleagues who's on the General Affairs Committee was here so that I could publicly thank him for his effort to advance this bill and to be the deciding vote, but he will remain anonymous. But we're going to take up time here and I appreciate the effort of Senator Stuthman and Senator Synowiecki to try to create us a creative idea to help with the Racing Commission. But again, I think the goals for benefit are probably not as great for the actual ag industry or for the state as they would be for the actual specific racetracks that would be benefiting from this. And again, I have a hard time with the idea. But we can continue to discuss. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Erdman. Further discussion on the motion? Senator Aguilar, followed by Senator Stuthman.

SENATOR AGUILAR: Thank you, Mr. President and members. I rise

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in support of this legislation and I'm going to take another different perspective here and look at it. But the first thing I wanted to address is something Senator Erdman just talked about. He doesn't think the benefits are that good. I'm very fortunate to live in Grand Island where Fonner Park is located and it is one of the most successful tracks here in the state of Nebraska. They struggle financially every year just like everybody else does. But they've been able to keep their heads above water and make it. And this proposal would just allow them to do a little more, to make a little more. And when they make more money, it's not necessarily all bottom-line profit. Let me give you some examples of what happens with some of the money Fonner Park takes in each year. Over the last couple years, and this doesn't include this year at all, they've contributed over \$3 million in different donations to the community, donations to different civic organizations like the Humane Society, Crimestoppers, the chamber of commerce, and Family Violence Coalition; Island Oasis Water Park, there's new soccer and softball fields throughout their complex; the Red Cross, the Grand Island EMTs and the fire departments, they've contributed fire trucks to our community; Third City Community Clinic. They open it up to any service agency that requests it at no charge. They've given over \$207,000 in scholarships to area high school students, over half a million a year in the use of the facility for community groups, as well as the county fair. Right now, we're almost through, we'll be done sometime this summer with the Heartland Event Center. Fonner Park's contribution to that was a mere \$10 million. So, yes, Senator Erdman, there are substantial contributions that come from these things and not to mention the jobs. There's trainers and grooms in excess of 500 every year, jockeys, Fonner Park employees, concessions, guards, janitorial. It goes on and on what they can do for the community. And if you're lucky enough to have one of these facilities in your community, I think we all know what the benefit of that could be. I'd like to talk a little bit about something Senator Pederson said. He was concerned that people could bet too often. Well, Senator Pederson, they can do that right with simulcast. I've been to Fonner Park on the weekend and my wife and I go out and we bet a couple horse races and just have fun with it. And I might be betting live races; she'll turn the channel on the screen in front of us and

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bet on a horse in Santa Anita, and she likes to do that because there's different types of wagering that take place at some of those tracks. And one of her favorites is to try to...what they call a superfecta, and she can bet for 10 cents. You know, definitely a form of entertainment when you look at it from that respect. And that's the fun thing about having the videos, having the simulcast. The historic races would just be a takeoff of that, be every bit as fun. As far as, you know, I think Senator Chambers commented that it would just be luck. That's not necessarily true because before the race, you're provided the same information that you're provided before a live race, as well as, you know, the horses' records, how many races they've run, how they've done in the past, some of their history, the jockeys. I think just about everything is available except the horse's name. So you know, it's every bit as much skill as the live race. That's all what happens there. One thing that wasn't pointed, too, you know, like I said, I look at the races as fun and entertainment. But everybody always talks about losing money. I made money out there and it can happen. A lot of people make money, and that's what makes it enjoyable; that's what keeps you going back to the track. And you know, it's fun. It's not something I've ever got addicted to but I'll go a couple weekends a year. And, you know, it's nice to have it right there...

SENATOR CUDABACK: One minute.

SENATOR AGUILAR: ...in my community and see the good it can do. If Senator Synowiecki would like the last minute, he may have it.

SENATOR SYNOWIECKI: Thank you, Senator Aguilar, and I appreciate your comments relative to Fonner Park in Grand Island. And I tell you, one of the things that precipitated me to introducing the bill was my conversations with Horsemen's Park in Omaha. One of those Council Bluffs casinos has undergone a \$60 million addition, and I'm sure a lot of that is from Nebraska gamblers. And part of that renovation of that casino is their simulcast facilities. And there is some enormously serious concern from the management at Horsemen's Park in Omaha that that \$60 million expansion in Council

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Bluffs...if we don't give them some additional tools, we're going to lose the little vibrancy we still have left in the thoroughbred industry in this state because of the competition from Council Bluffs in particular and, in particular, this casino which has undergone, as I said, a \$60 million addition.

SENATOR CUDABACK: Time, Senator.

SENATOR SNOWIECKI: Thank you.

SENATOR CUDABACK: Thank you. And thank you, Senator Aguilar. Mr. Clerk, items for the record?

CLERK: Mr. President, a new resolution: Senator Kremer and others offer LR 441. Pursuant to its introduction, I have a communication from the Speaker referring LR 441 to the Reference Committee, and the Reference Committee has referred LR 441 to the Agriculture Committee for purposes of conducting a public hearing. (Legislative Journal pages 1357-1358.)

Mr. President, I have a priority motion. Senator Price would move to adjourn until Monday morning, April 3, at 10:00 a.m.

SENATOR CUDABACK: Heard the motion to adjourn, April 3, 10:00 a.m. All in favor say aye. Opposed, nay. We are adjourned. Members have a nice weekend. Take your umbrella with you.

Proofed by: JAH